

WRDA 2024: STAKEHOLDER FEEDBACK ON USACE PROJECT PARTNERSHIP AGREEMENTS

HEARING BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

NOVEMBER 29, 2023

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED EIGHTEENTH CONGRESS
FIRST SESSION

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WEDNESDAY, NOVEMBER 29, 2023

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10:03 a.m. in room 406, Dirksen Senate Office Building, Hon. Thomas R. Carper (chairman of the committee) presiding.

Present: Senators Carper, Capito, Cardin, Whitehouse, Kelly, Fetterman, Ricketts, Boozman, Sullivan.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Good morning, everyone. Welcome to the Committee on Environment and Public Works. I am happy to be here with all of you. We warmly welcome our witnesses and others in the audience.

Senator Capito, good morning to you and other members of our committee.

There is a lot going on in the Senate today. You probably do not believe that, but there is. We are getting stuff done. I think just about every committee is meeting now. We will have people coming and going. There is a lot of interest in the issues we are going to be discussing here today.

We appreciate each of you for making the time to join us after a grueling Thanksgiving holiday. I hope you had as much fun on your holiday as my family did.

Today, we are here to discuss the U.S. Army Corps of Engineers' Project Partnership Agreements. What exactly are Project Partnership Agreements? I do not like acronyms a lot. EPA is Okay, but sometimes people get carried away with acronyms. I am going to ask you to refrain from the use of acronyms for the most part, so I can understand what you are saying. Sometimes people get carried away. Sometimes we get carried away.

PPAs are documents signed by the Army Corps of Engineers and non-Federal project sponsors that guide work that is authorized under the Water Resources Development Act, affectionately known around here as WRDA. These projects are critical to coastal and inland flood risk mitigation, navigation, and ecosystem restoration, among other purposes.

I will also say they are critical, because one of the major roles of the Federal Government, and State governments as well, and I say that as a recovering Governor, one of the major roles of government is creating a nurturing environment for job creation, job preservation. What we are going to be talking about here today is one of the major ingredients for creating that nurturing environment.

I like to help people, and I think one of the best ways you can help folks is certainly making sure they have clean water to drink and clean air to breathe, but also make sure that they have a job, so they can support themselves and their family.

As many of us know, despite the Army Corps' exceptionally important and challenging mission, the agency's funding needs far outweigh its available resources. Why does this matter? Well, the projects carried out by the Corps provide the backbone of America's water infrastructure. That work includes protecting communities from damaging floods, enabling billions in commerce through our ports and through our waterways, and restoring hundreds of thousands of acres of aquatic ecosystems. Corps projects also help prepare communities for extreme weather events, which we know are getting worse due to climate change.

The importance of that work cannot be overstated. For example, the National Oceanic and Atmospheric Administration estimates that the threat of sea level rise is going to accelerate in the next 30 years if we do not do more about it. That is certainly going to impact many of the roughly 40 percent of Americans who live in coastal counties, including my own.

In addition, the seven most destructive storms since 2000 have cost American taxpayers over \$1.3 trillion. Let me say that again. I didn't believe it when I first saw this. I said to my staff, go check that out. The seven most destructive storms since 2000 have cost American taxpayers over \$1.3 trillion.

These storms destroy homes and cars, and grind travel and tourism to a halt, and oftentimes uproot people's lives and not infrequently, take people's lives. Corps projects are there to defend against these disasters.

Corps projects also help keep our economy moving, as I was saying earlier. The Corps is directly responsible for operating America's water highway, a 12,000-mile-long system of inland waterways that are vital to domestic and international commerce. Most of the markets for the products that we create in this Country are not in this Country, they are outside of this Country. The way we get, for the most part, our products to other places, we send a lot of stuff by air, but mostly it is on the water, and waterways that the Army Corps helps to make available and of course that they help enable are critically important.

Each year, that expansive system, that 12,000-mile system of inland waterways, moves more than 500 million tons of commodities, 500 million tons of commodities, including 60 percent of our Nation's agricultural exports. The Corps' work to help operate and maintain that system results in an economic benefit of nearly \$14 billion each year.

Given the range of benefits of Corps projects, it should come as no surprise that WRDA, the reauthorization of WRDA, continues to enjoy broad bipartisan support. We do a lot here in this room in

a bipartisan way. Senator Capito and I subscribe to an aphorism, and I think I heard from our guy from Wyoming, it was right there where you are, Mr. Hague, and he said in testimony, at his confirmation hearing, he said, Bipartisan solutions are lasting solutions. Bipartisan solutions, I believe that with every fiber of my being.

Our most recent WRDA passed the Senate in 2022 by a vote of 93 to 1. That does not happen every day in the Senate. It happens almost never in the Senate, in a roll call vote, at least. Ninety-three to 1, and that piece of legislation, that WRDA legislation 2 years ago, ended up carrying with it to the President's desk the National Defense Authorization Act which the President signed into law. It is like WRDA was a locomotive, and one of the cars that it was pulling was the National Defense Authorization Act, which is a huge piece of legislation.

Ranking Member Capito and I intend to continue this bipartisan track record with WRDA 2024. We solicit input from literally every single Senator, every State that is represented in the U.S. Senate. Our colleagues have been great to provide us with plenty of input, plenty of input. As many of you know, the bill is currently under development, thanks in no small part to robust input from many of our colleagues. Senator Capito and I intend to move it through our committee before next summer.

That brings us to today's discussion on the Corps Project Partnership Agreements. Since kicking off the WRDA 2024 process in July, Senator Capito and I and our staffs have heard concerns that these agreements could be stalling critical construction projects. We need to understand what is causing these delays and what can be done about them.

As I stated earlier, a Project Partnership Agreement is a guiding document between the Corps and a local project sponsor that outlines both the Federal and non-Federal stakeholder's roles and responsibilities for the construction and long-term care of the project.

Since 2012, the Corps has dramatically changed the project agreement process, developing templates and streamlining requirements to provide consistency and fair treatment to stakeholders. Having said that, not every Corps project is the same. Stakeholders have raised with us, probably every member of this committee has raised with us that these agreements need to be made more flexible and that many of the requirements are cumbersome.

Yet, given the importance of Corps projects for the safety and well-being of communities, non-Federal sponsors feel pressured to sign unfavorable Project Partnership Agreements. Ultimately, it is our job in Congress to ensure that Federal investments are protected. At the same time, we must also ensure that non-Federal stakeholders can support the projects and are not made to assume an unreasonable amount of risk.

Having said that, we look forward to hearing from each of you, some of you have come a long way and we are grateful that you have done that, and we are looking forward to hearing about your experiences in working with the Corps to develop and implement Project Partnership Agreements.

We also look forward to hearing your perspectives on what is going well as well as finding what we can do better. I say almost

every day, everything I do I know I can do better. I think that is true of all of us. The idea here is to improve on what we have done before for many years.

Before we do that, I want to yield to Senator Capito for whatever she might like to say. Senator Capito, we appreciate the opportunity to work with you and your team on this project again. This is a great one. I wish people around the Country who think we can never work together, I wish they could see how this committee works, especially on this issue. Thank you.

**OPENING STATEMENT OF HON. SHELLEY MOORE CAPITO,
U.S. SENATOR FROM THE STATE OF WEST VIRGINIA**

Senator CAPITO. Thank you, Mr. Chairman. You are right; we do have a great track record of working together on WRDA, and we are going to continue that as we move into the next year.

I welcome our witnesses. In my short conversation with Mr. Hague, I particularly welcome my fellow West Virginian. You need to hear this, he is from Charleston, West Virginia and is a proud graduate of Capital High School. Thank you for coming and being a part of this, all of you, but a special shout-out to my West Virginian.

If you didn't see it last night, and I know Senator Ricketts was there, we lit the Christmas tree, the Capitol Christmas Tree, the people's Christmas tree, which came from the Mon Forest in West Virginia. I have just now thawed out from watching that, because it was so cold out there.

[Laughter.]

Senator CAPITO. Anyway, since 2014, we have kept to the biennial schedule of passing bipartisan legislation that authorizes water resources studies and projects. WRDA also sets national policies for the civil works program of the U.S. Army Corps of Engineers, and I look forward to continuing that track record, as I said.

This summer, Chairman Carper and I, he mentioned this in his opening remarks, sent a letter to our Senate colleagues soliciting their requests for WRDA 2024. I appreciate the efforts of our Senate colleagues to submit their proposals for our consideration. I am pleased to say we received a significant number of requests, more than the last time, which demonstrates the strong interest in and necessity of this legislation.

I have said previously it is important any WRDA bill supports the timely and efficient delivery of water resources projects, while continuing to meet national priorities. Flexibility is key to ensuring that the Corps can identify and carry out solutions that are tailored to address the needs and individual needs of our communities. Our Nation's water resources challenges are diverse, and communities know more about their unique needs than the policymakers here in Washington.

We must also continue to preserve the role of non-Federal sponsors in the project delivery process and maintain the Corps' focus on its primary mission areas: navigation, flood and coastal storm risk management, and ecosystem restoration. Insight from our non-Federal sponsors on their experiences with completed and ongoing projects helps inform what, if any, modifications are needed to the Corps' authorities.

Today, we will discuss, as the Chairman said, project partnership agreements, PPAs. In general, PPAs are legal documents between the Corps and a non-Federal sponsor for construction of an authorized water resources project. These agreements describe the project and the responsibilities of each party.

The Corps has undertaken efforts to simplify this process for executing PPAs by standardizing model agreements and issuing guidance for certain types of projects. The Corps also considers deviations from the model agreements on a case-by-case basis.

However, Federal law requires certain provisions to be included in the PPAs, limiting what modifications the Corps is able to consider in some instances. One of those statutorily required provisions is known as the hold and save clause. This provision, mandated by WRDA 1986, requires non-Federal sponsors to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to fault or negligence.

PPAs also describe the operation, maintenance, repair, replacement and rehabilitation, or O&M, responsibility of the Federal Government and non-Federal sponsors. O&M responsibilities vary with project purpose. For certain projects, the non-Federal sponsor will be responsible for O&M activities in perpetuity, regardless of the useful life of the project.

Some stakeholders have indicated that certain required language in PPAs can delay the execution of these agreements. A delay can extend the construction timeline for a project, and potentially and probably would lead to increased costs.

This hearing will provide us an opportunity to learn more about these concerns and listen to proposed solutions. It will also highlight how non-Federal sponsors have successfully negotiated PPAs with the Corps.

As we have this discussion today, it is important to remember that these projects require significant Federal investment in order to be realized. Ultimately, we must ensure that any changes to PPAs appropriately balance each parties' risks.

I want to thank our witnesses today for sharing their perspectives on this topic. I would say anecdotally, in discussing the topic of our hearing today, somebody said it is in the weeds. You know, it is very wonkish as to what we are talking about and how this is going to finally shake out in our WRDA bill.

I would say as we look at the map of the United States, every project that is done, whether it is done through a PPA or not, is absolutely essential to the safety and the environmental prosperity of every part of our Country. If the weeds are not right, the projects are not going to be right and the results are not going to be right.

I think that highlights how important a hearing like this is today, and I thank the witnesses for coming.

Thank you.

Senator CARPER. Thank you for those words, and thanks for the greater partnership we have forged over the last several years.

I want to say, we are only as good as the people around us. We have great staff behind us, Democrat and Republican. We are grateful for their work in bringing us all together today as well.

I am going to introduce our three witnesses. We need a lead-off hitter. I see somewhat of a famous name, like The Hague.

[Laughter.]

Senator CARPER. Has anyone ever called you The Hague?

Mr. HAGUE. Yes, Senator, that has been a nickname at different points in my life.

Senator CARPER. I can only imagine. I can not tell you some of the ones I have been called.

Jimmy Hague, Senior Water Policy Advisor for the Nature Conservancy since, what, 2016? Is that right? Mr. Hague leads the development of the Nature Conservancy's Federal Freshwater Conservation Policy Priorities and coordinates advocacy across the organization's chapters. You have chapters in all 50 States?

Mr. HAGUE. Yes, Senator.

Senator CARPER. I thought so. We are glad you are here with us today, and appreciate all that the Nature Conservancy does. Please feel free to go ahead with your statement. Welcome.

STATEMENT OF JIMMY HAGUE, SENIOR WATER POLICY ADVISOR, THE NATURE CONSERVANCY

Mr. HAGUE. Chair Carper, Ranking Member Capito and members of this Committee, thank you for the opportunity to testify today. I am honored to present to you the views of The Nature Conservancy concerning the U.S. Army Corps of Engineers Project Partnership Agreements. As Senator Capito noted, I was born and raised in West Virginia, so it is an extra honor to be here in front of my fellow West Virginians.

Senator CARPER. Where were you born?

Mr. HAGUE. In Charleston, sir.

Senator CARPER. Okay.

Mr. HAGUE. I know you have great West Virginia roots yourself.

Senator CARPER. Yes. Her dad was Governor of my State when I was born, when my sister and I were born.

Mr. HAGUE. The Nature Conservancy is a global conservation organization dedicated to conserving the lands and waters on which all life depends. Guided by science, we create innovative, on-the-ground solutions to the world's toughest challenges so that nature and people can thrive together.

In the United States, the Corps is critical to achieving our goals for healthy and resilient rivers, lakes, and coasts. The Conservancy has worked with the Corps on that mission through dozens of projects and programs across the Country. We contribute scientific expertise on the use, design and evaluation of nature-based solutions, assist with program implementation, and advocate for changes to modernize Corps procedures.

The decades-long collaboration the Conservancy has built with the Corps has supported our conservation goals. The work we do together in communities across the Country has improved flood risk resilience, economic development and environmental protection. My written statement includes specific examples of our work together with the Corps.

On a personal level, my work with the Corps has been some of the most fulfilling and rewarding of my career. I am always im-

pressed by the dedication and skill of its staff at all levels of the organization, both those in uniform and their civilian employees.

The Conservancy appreciates this committee's efforts to keep the Water Resources Development Act on a 2-year cycle every Congress since 2014, as well as your efforts in recent bills to emphasize nature-based solutions in the Corps' work. Your commitment to investing in and modernizing our Nation's water resources infrastructure in a bipartisan manner has been critical to the success of our collaboration with the Corps.

The topic of today's hearing is an important one, since the regular WRDA cycle you have established is authorizing new projects for study and construction and is guiding the Corps to build projects which deliver multiple benefits, enabling more resilient communities. To achieve this goal, we should minimize the barriers to non-Federal project sponsors who agree to share the costs of building water resources projects with the Corps.

Unfortunately, we know many project sponsors who feel the terms of the cost-sharing agreements are difficult to accept. Most Corps projects cost tens of millions to hundreds of millions of dollars, and at a 35 percent construction cost share, non-Federal sponsors must take on significant financial responsibility for a project, even though the Corps retains ultimate control over many project design and implementation decisions.

On top of that, some of the requirements of the cost-sharing agreement all non-Federal sponsors must sign with the Corps create open-ended obligations for the non-Federal sponsor. First, the cost-share requirement remains the same, even if projects go over budget for any reason, including reasons beyond the non-Federal sponsor's control. Sponsors must cost share any and all project cost overruns.

Second, project costs become the sole responsibility of the non-Federal sponsor after construction is complete, and the sponsor must operate and maintain the project in perpetuity. The uncertain nature of total construction costs and the unbounded commitment to operations and maintenance costs make it difficult, if not impossible, for the sponsor to estimate the true cost of a project and manage financial risks. Third, the requirement in the cost-sharing agreement to hold and save the Federal Government free from harm creates unbounded and unquantifiable legal risks for project sponsors, and can discourage them from sponsoring or agreeing to participate.

Some of these requirements are rooted in statute, and they will need your leadership to change. This committee has taken steps to address some of those barriers, including in last year's WRDA bill, and I urge you to continue with that effort.

Given the variety of projects the Corps builds, and unique local conditions and stakeholder needs, I urge you to consider a variety of solutions that will help sponsors contain their legal and financial risks. Non-Federal sponsors need your help to rebalance how risks are shared between the Army Corps and the non-Federal project sponsor of a water resources project. Doing so will unleash the power of potential local sponsors across the Country to partner with the Army Corps to deliver more and better projects.

Thank you for the opportunity to testify today. I look forward to your questions.
[The prepared statement of Mr. Hague follows:]



**Testimony of
Jimmy Hague, Senior Water Policy Advisor for The Nature Conservancy
Regarding U.S. Army Corps of Engineers Project Partnership Agreements
Before the Committee on Environment and Public Works
U.S. Senate**

November 29, 2023

Chair Carper, Ranking Member Capito and Members of the Committee, thank you for the opportunity to testify today. My name is Jimmy Hague, Senior Water Policy Advisor at The Nature Conservancy. The Nature Conservancy (TNC) is a global conservation organization dedicated to conserving the lands and waters on which all life depends. Guided by science, we create innovative, on-the-ground solutions to the world's toughest challenges so that nature and people can thrive together.

We tackle climate change, conserve lands, waters and oceans at an unprecedented scale, work to provide food and water sustainably, and help make cities more sustainable. Working in all 50 states and 79 countries and territories, we engage local communities, governments, the private sector, and other partners, including farmers, ranchers and other landowners to achieve effective and lasting conservation impact.

TNC and USACE Partnership for Water Conservation

We know we have years, not decades, to take on the interconnected crises of climate change and biodiversity loss. What we do between now and 2030 will determine whether we slow warming to 1.5 degrees Celsius—the level scientists agree will avoid the worst impacts of climate change.

Our actions will also determine whether we conserve enough land and water to slow the rapid acceleration of species loss. If we do both, we will be able to safeguard people from the disastrous effects of both of these crises.

At the Nature Conservancy (TNC) we have set six ambitious global conservation goals we aim to achieve by 2030. For example, by the end of the decade, our organization aims to conserve 1 million kilometers of rivers—enough to stretch 25 times around the globe—plus 30 million hectares of lakes and wetlands.

In the United States, the U.S. Army Corps of Engineers (USACE) is critical to achieving our goals for healthy and resilient rivers, lakes, and coasts. TNC has partnered extensively with USACE on that mission through dozens of projects across the country, contributing scientific expertise on the use, design, and evaluation of nature-based solutions, assisting with program

implementation and advocating for policy changes to modernize USACE procedures. Examples include:

Chesapeake Bay Oyster Restoration, Maryland and Virginia. A partnership composed of USACE, the National Oceanic and Atmospheric Administration, Maryland Department of Natural Resources, Virginia Marine Resources Commission, TNC, and many others has worked for more than a decade to restore oyster reefs in ten Chesapeake Bay tributaries by 2025. The partnership is on track to meet and exceed that goal, and in doing so has created the largest oyster reef restoration projects in the world and a global model for success.

Engineering With Nature Initiative. The USACE Engineering With Nature (EWN) initiative describes itself as “the intentional alignment of natural and engineering processes to efficiently and sustainably deliver economic, environmental, and social benefits through collaboration.” The initiative started in 2010, and TNC has supported and participated in its work since its inception. For example, TNC scientists helped write EWN’s [International Guidelines on Natural and Nature-Based Features \(NNBF\) for Flood Risk Management](#), published in September 2021, and [EWN’s atlases](#) showcasing EWN principles and practices in action which have included nature-based work TNC was involved in at Jekyll Island, Georgia; Mill River Dam in Taunton, Massachusetts; Puyallup River Revetment in Washington state; Howland Dam Fish Bypass in Maine; and Emiquon Water Management in Illinois. We have also conducted educational briefings on nature-based solutions with EWN leads and other partners for Congress and participated in the EWN podcast series.

Hamilton City Flood Damage Reduction and Ecosystem Restoration Project, Hamilton City, California. TNC worked with USACE and the non-federal project sponsor, Reclamation District 2140, on a multipurpose flood damage reduction and ecosystem restoration project in Hamilton City, California, located approximately 90 miles north of Sacramento adjacent to the west bank of the Sacramento River. It consists of (1) the construction of a 6.8-mile set-back levee to provide improved flood protection to the community and agricultural areas and (2) the reconnection of approximately 1,400 acres to the Sacramento River flood plain and restoration of the acreage into the native riparian habitat.

Missouri River Levee Unit 536 Large-Scale Setback, Northwestern Missouri. TNC worked with USACE, the Atchison County Levee District (the non-federal project sponsor), and a team of other federal and state agency representatives to complete a complex, large-scale levee setback after floodwaters destroyed most of the left bank of Missouri River Levee Unit 536 in northwestern Missouri. Following the completion of construction in summer 2021, the rehabilitated levee restored flood protection to the community and reconnected over 1,400 acres of floodplain and wetlands along with high-value habitat for fish and wildlife.

Sustainable River Program. In 2002, TNC and USACE launched a collaborative effort to find more sustainable ways to manage USACE facilities to optimize benefits for people and nature. Now known as the Sustainable Rivers Program (SRP), this collaboration has grown from eight rivers in 2002 to 40 rivers in 2021 that encompass nearly 11,000 miles of waterways and include 89 reservoirs and their dams as well as 10 lock and dam systems.

SRP focuses on determining unique flow requirements for rivers and then creating operating plans for dams that incorporate environmental flows—scientific prescriptions for the timing, quantity and quality of water flow that must occur downstream and upstream of dams to sustain ecological functions and habitat for species. SRP is successful because it combines scientific expertise with a collaborative approach that engages stakeholders in reviewing and determining new flow patterns.

Upper Mississippi River Restoration Program (UMRR) and Navigation and Ecosystem Sustainability Program (NESP), Illinois, Iowa, Minnesota, Missouri and Wisconsin.

UMRR supports coordinated habitat rehabilitation and enhancement projects and long-term resource monitoring for the upper Mississippi River system covering the states of Illinois, Iowa, Minnesota, Missouri and Wisconsin. Thirty years of successful partnership has completed more than 58 projects benefiting more than 107,000 acres of aquatic and floodplain habitat.

NESP is a dual-purpose program that allows USACE to address both navigation improvements at seven locks and dams and ecosystem restoration in an integrated approach along the upper Mississippi and Illinois rivers. NESP will improve conditions for fish and wildlife through the construction of dozens of projects for fish passage, modified dam operations, side channel reconnections and modifications to channel structures.

TNC partners with USACE and the affected states on both programs to ensure the upper Mississippi River system can be a healthy and vibrant ecosystem for future generations while supporting a strong economy for the region and nation.

The decades-long partnerships TNC has built with USACE have supported our common conservation goals across the country in the communities where we live and work through improved flood risk resilience, economic development, and environmental protection. Our partnership remains an essential part of TNC's plans to confront the biodiversity and climate crises in the United States and globally. And we look forward to working with USACE—from its leadership at the Pentagon and headquarters down to every USACE district—to achieve our shared goals that deliver clean water and healthy and resilient rivers, lakes, and coasts.

The Water Resources Development Act of 2024 and Cost-Sharing Agreements

TNC supports and appreciates your collective efforts to keep the Water Resources Development Act (WRDA) on a two-year cycle every Congress since 2014. The consistency and predictability of your WRDA process ensures that members of Congress and stakeholders can make timely adjustments to USACE programs while continuously processing the pipeline of navigation, flood control, ecosystem restoration and other projects that are critical to the nation's economy, well-being, and quality of life. This committee's commitment to investing in and modernizing our nation's water resources infrastructure in a bipartisan manner has also been critical to the success of the USACE-TNC partnership.

TNC applauds your commitment to producing bipartisan water resources legislation emphasizing nature-based solutions to current and future flood and storm risk reduction challenges as well as ecosystem restoration. In every WRDA since 2016, this committee has advanced legislation directing USACE to consider nature-based solutions in the project planning process, benefit-cost analysis, small-scale continuing authorities programs, flood control projects for disadvantaged communities, and regional studies. TNC continues to work with USACE to ensure these provisions are implemented consistent with congressional intent, and we urge you to monitor the agency's progress as part of your oversight.

The topic of today's hearing sits at the confluence of those two trends: a regular WRDA cycle that is authorizing new projects for study and construction and significant policy changes designed to produce projects with multiple benefits for more resilient communities. To meet this demand, we need to minimize the barriers to non-federal project sponsors who are required to cost-share USACE projects.¹ In our experience working with USACE and local stakeholders on projects across the country, we have encountered many barriers contained within the cost-sharing agreements all non-federal sponsors must sign that are worth your consideration for improvement in WRDA 2024.

My testimony is based on TNC's experience working with USACE and non-federal sponsors as well as other anecdotal experience we have encountered from other local stakeholders.

Challenges with USACE Cost-Sharing Agreements

The project partnership agreement (PPA) is a legally binding agreement between USACE and a non-federal sponsor for the construction of a water resources project. It describes the project and the responsibilities of USACE and the non-federal sponsor in the cost-sharing and execution of work. PPAs are drafted and negotiated once a project has been authorized and funded. They must be signed by both parties before construction can begin. PPAs are required for individually

¹ Non-federal project sponsors, defined in statute as "non-Federal interest," can be "(1) a legally constituted public body (including an Indian tribe and a tribal organization (as those terms are defined in section 5304 of title 25)); or (2) a nonprofit entity with the consent of the affected local government, that has full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform." 42 U.S.C. 1962d-5b

authorized and funded USACE projects as well as projects authorized and funded under the Continuing Authorities Program, environmental infrastructure and regional authorities.

Most of the barriers described in this testimony are limited to those in PPAs. However, managing project cost overruns is also problematic for the feasibility cost-sharing agreements (FCSA), which are cost-sharing agreements between USACE and the non-federal sponsor for the study and planning phase of a USACE project.

Indemnification

As required by sections 9 of WRDA 1974 (42 USC 1962d-15), and 103(j) of WRDA 1986 (33 USC 2213(j)), the non-federal sponsor of a USACE project must “hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors.” This indemnification requirement forces the non-federal sponsors to assume complete and total liability for any damages caused by USACE-constructed projects (except for damages proved to be the fault or negligence of USACE). It represents an unbounded legal and financial risk to the non-federal sponsor. Given that USACE has ultimate authority for project planning, design and construction, this approach does not reflect an equitable allocation of liability risk and, in some cases, conflicts with state law.²

According to the Association of Fish and Wildlife Agencies, at least 28 states have conflicts between the indemnification requirement and state law (Figure 1). To work around these issues, some states have passed legislation to allow them to take on liability when entering into contracts with the federal government. Other states have local governments serve as the official non-federal sponsor, and these entities secure insurance and sign the PPAs.³

² Many states have a provision in their constitutions prohibiting an incurrence of an obligation without an encumbrance against an appropriation. Full indemnification conflicts with the law because it is a promise of an indeterminate amount of money for an indeterminate reason at an undetermined time in the future. States also often have tort law that specify their requirements and associated compensation and limit the extent to which states are responsible for others’ actions, including their state personnel.

³ National Academy of Public Administration, 2018. The U.S. Army Corps of Engineers: An Evaluation of the Project Partnership Agreement Process.

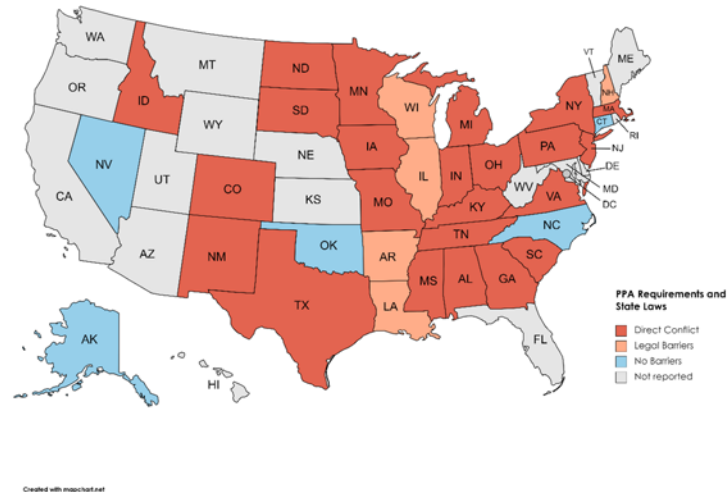


Figure 1. States with known conflicts between PPA indemnification requirements and state law. Association of Fish and Wildlife Agencies.

Cost-share and project cost overruns

Except for smaller projects conducted under the Continuing Authorities Programs, USACE projects can cost tens to hundreds of millions of dollars to construct. Also, given that USACE leads on project design and implementation, the non-federal sponsor has limited control over the ultimate project costs and timeline of project work. At a 35% construction cost share, non-federal sponsors must shoulder a significant financial burden to meet their match requirements. In addition, uncertainty about total project costs, budgeting and the timeline of a project can discourage potential non-federal sponsors from signing PPAs. If a project exceeds its congressionally authorized project cap, USACE must either cease work or seek an increased authorization through congressional action (i.e., a post-authorization change report (PACR)).

This action could take years to secure, causing or exacerbating delays in project completion which will drive up project costs further. The non-federal sponsor could choose to continue the project but, in doing so, would need to cover 100% of the costs if Congress does not increase the cost cap. Even with a successful PACR, the non-federal sponsor would have additional cost-share obligations under the new project cost cap that cannot be known at the time of signing the cost-sharing agreement. This uncertainty makes it difficult, if not impossible for the non-federal sponsor to estimate the financial burden they will be responsible for over the lifetime of a project when signing a cost-sharing agreement.

TNC has encountered cost-share and project cost overruns in the construction and feasibility phases of a project. Despite direction in WRDA 2014 for USACE to complete feasibility studies for \$3 million or less, the FCRA will not specify an upper limit for the non-federal sponsor's cost-share responsibility, which nominally should be \$1.5 million at 50% cost-share for feasibility studies. Even with the relatively small project costs during the feasibility study compared to project construction, that level of uncertainty in a legally binding agreement with USACE can make the non-federal sponsor's participation challenging to finance.

Operations, maintenance, repair, rehabilitation, and replacement (OMRR&R)

As required by section 103(j) of WRDA 1986 (33 USC 2213(j)), the non-federal sponsor of a USACE project must agree to pay "100% of the operations, maintenance and replacement and rehabilitation costs of the project." The PPA does not put a time limit on the OMRR&R responsibility of the non-federal sponsor, and the details of the OMRR&R responsibility often are not finalized until after project construction is complete and USACE issues the OMRR&R Manual. This is well after the non-federal sponsor has legally committed in the PPA to pay for the OMRR&R in perpetuity.

The OMRR&R requirement can be particularly problematic to implement nature-based solutions. Many nature-based projects like coral reef, oyster reef and wetland restorations rely on natural processes and climatic conditions over which the non-federal sponsor has little control. Some of these projects, if successful, will achieve natural system functionality, requiring no additional OMRR&R beyond that of underlying easements and land ownership. However, in some instances where a project is damaged, it may not make sense to rebuild these projects in the same location as required in the PPA.

Credit for the use of donated materials

Section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b) states that credit toward the non-federal sponsor's share of project costs "shall not exceed the actual and reasonable costs of the materials, services, or other things provided by the non-Federal interest, as determined by the Secretary." (emphasis added). In some instances, non-federal sponsors have received donations of materials from a third party to be applied to a USACE project. Because the donated materials came to the non-federal sponsor at no cost, USACE does not fully count them as part of the non-federal cost share, limiting the flexibility of the non-federal sponsor to partner with others in the community in order to meet its cost-share obligation.

Previous PPA improvements by Congress

Congress has already taken steps to address some of the barriers described above.

Use of other federal funds for cost-share match

In Section 8149 of WRDA 2022 (Use of other Federal funds), Congress amended an authority from WRDA 2007 to allow the non-federal sponsor for a water resources development study or

project, a study or project under a Continuing Authority Program, or an environmental infrastructure study or project to use funds provided by another federal agency to satisfy the non-federal share of the cost of the study or project, if certain conditions are met. Specifically, the federal agency that provides the funds must determine that “(1) the statutory authority for the funds provided by the Federal agency does not expressly prohibit the use of the funds for a study or project of the Corps of Engineers, and (2) the Federal agency that provides the funds determines that the study or project activities for which the funds will be used are otherwise eligible for funding under such statutory authority.” (33 U.S.C. 2222)

This authority should give some relief to non-federal sponsors from the significant financial obligation to provide the cost-share match. It should be particularly beneficial to multi-purpose projects that meet the complementary needs of USACE and, for example, resource management agencies like the National Oceanic and Atmospheric Administration and the U.S. Fish and Wildlife Service.

OMRR&R for some aspects of ecosystem restoration projects

There has been some recognition that non-federal sponsor responsibility for OMRR&R can be reduced in the case of nature-based ecosystem restoration projects. Section 1161 of the Water Infrastructure Improvements for the Nation Act of 2016 limits the “responsibility of a non-Federal interest for operation and maintenance of the nonstructural and nonmechanical elements of a project, or a component of a project, for ecosystem restoration” to “10 years after the date on which the Secretary makes a determination of [project] success” (33 U.S.C. 2330a). (It further states, “The Secretary is not responsible for the operation or maintenance of any components of a project concerning which a non-Federal interest is released from obligations under subsection (e).”) Implementation guidance for this provision of the WIIN Act provided additional detail regarding the definition of ecological success. At that point, no further monitoring by the non-federal sponsor is required.

While we are not aware of any projects that have used or plan to use this provision for projects initiated since the WIIN Act, it should provide some relief from the OMRR&R problems discussed above for the set of nonstructural and nonmechanical elements of an ecosystem restoration project. However, this provision remains tied to an uncertain point of time when “the Secretary makes a determination of [project] success.” Also, we are concerned about the practicality of separating the OMRR&R responsibility for “nonstructural and nonmechanical elements of a project” from the structural elements when an ecosystem restoration project uses both, as well as whether USACE would consider natural and nature-based features to be nonstructural or nonmechanical.

National Academy of Public Administration PPA evaluation

Section 1013 of the Water Resources Reform and Development Act of 2014 directed the Secretary to contract with the National Academy of Public Administration (NAPA) to carry out a comprehensive review of the USACE PPA process and template. In addition to evaluating the

process for preparing, negotiating and approving PPAs, NAPA was tasked with recommending improvements based on feedback from non-federal sponsors. NAPA issued its report to the Secretary of the Army in November 2018.⁴

The NAPA report describes the PPA process and challenges well and summarizes many of the same concerns encountered by non-federal sponsors that are in my testimony. It included in its recommendations to the Secretary many changes to the PPA process that are worth tracking as part of your committee's oversight. However, it did not include in its recommendations concerns with the PPA that originate in statute, such as the indemnification, OMRR&R, and the credit for use of donated materials described above.

Non-Federal Interest Advisory Committee

Section 8150 of WRDA 2022 requires the Secretary to establish a Non-Federal Interest Advisory Committee, in accordance with the Federal Advisory Committee Act. This Committee is directed to provide the Secretary with advice and recommendations to ensure more effective and efficient delivery of water resources development projects, programs, and other assistance. Among its duties, the committee shall provide advice and make recommendations to strengthen "partnerships with non-Federal interests to advance water resources solutions." USACE has not established the Non-Federal Interest Advisory Committee yet.

Solutions

Building on this record of past PPA improvements, there are several options available that will make it easier for potential non-federal sponsors to overcome PPA barriers and to partner with USACE. Some solutions require you to revisit WRDA legislation, since the USACE has little ability to make adjustments administratively. For example, to relieve some non-federal sponsor concerns over indemnification, changes could be made to the "hold and save" clause by either eliminating it or replacing it with a standard that allows for a more shared approach to liability between USACE and the non-federal sponsor.

Based on our discussions with USACE, the agency believes it does not have the discretion to give credit toward the non-federal sponsor's share of the project over the cost of materials the non-federal sponsor provides. However, minor changes to the Flood Control Act of 1970 would bring USACE's crediting of donated materials in line with the rest of the Act's focus on the value of contributions from the non-federal sponsor rather than the costs. This change would incentivize maximum non-federal contributions to project costs, create added flexibility for non-federal sponsors, and better leverage federal investments in USACE projects.

There are also ways to give non-federal sponsors greater certainty about their financial burden with respect to managing project cost overruns and assuming OMRR&R responsibility. For instance, USACE could include binding project cost caps in the cost-share agreements (FCSA and

⁴ National Academy of Public Administration, 2018. The U.S. Army Corps of Engineers: An Evaluation of the Project Partnership Agreement Process.

PPA) negotiated with the non-federal sponsors as well as a process to work with the non-federal sponsor on cost overruns that does not require the non-federal sponsor to cost-share any and all overruns. A process like this would help incentivize entities to become non-federal sponsors. It would also minimize project delays caused by project stops and starts that drive up project costs.

The important change included in the WIIN Act of 2016 and the accompanying implementation guidance described above helped to resolve some of the OMRR&R challenges faced by non-federal sponsors of ecosystem restoration projects. However, we recommend a review of where and how this provision is being used and explore ways to expand its 10-year limit on OMRR&R to structural elements of ecosystem restoration projects as well as whether it could be extended to other project types.

Similarly, we recommend you monitor the implementation and use of the WRDA 2022 authority for a non-federal sponsor to use other federal funds for its cost-share match. USACE needs to ensure all potential project sponsors are aware of this authority.

With all these proposed solutions we recognize it could be difficult to apply a new standard to all USACE water resources projects. All USACE projects are unique and vary widely given local conditions and stakeholder needs. Therefore, one solution might be to apply some of these changes on a project-by-project basis or to direct USACE to conduct pilot projects testing new standards based on specific criteria. For instance, projects at existing USACE facilities, on federal land, or modifications to inland waterway navigation projects (where USACE was solely responsible for design, construction, and operation of the original project) may be more amenable to easing or eliminating the demands on non-federal sponsors for indemnification, OMRR&R, or cost-sharing. Also, as the WIIN Act of 2016 acknowledged, it may be more feasible to limit the non-federal sponsor's obligations in a PPA for an ecosystem restoration project than other project types.

Lastly, the National Academy of Public Administration (NAPA) report provides many options to pursue process reforms and other non-statutory reforms to the USACE PPA process and to monitor implementation of those recommendations by the committee. In addition, the Non-Federal Interest Advisory Committee could be a venue to examine other potential solutions. To stand up that committee, Congress may need to make the necessary appropriations so USACE can establish it as quickly as possible.

Conclusion

By reforming the cost-share agreements in WRDA 2024, more power would be unleashed to potential local sponsors across the country to partner with USACE in order to expedite project delivery and the multiple benefits of USACE projects. With the new project authorizations from recent WRDA legislation and the infusion of funds to USACE from the Infrastructure Investment and Jobs Act, for example, there is significant demand for non-federal sponsors who can enter into cost-share agreements. However, the current rigidity of PPAs has proven challenging for

many non-federal sponsors, especially since it was developed for grey infrastructure and is a relatively poor fit for environmental restoration projects and nature-based solutions. I urge you to focus on solutions to the challenges described in this testimony as you are writing WRDA 2024.

Thank you, Chair Carper, Ranking Member Capito, and Members of the Committee, for the opportunity to provide this testimony.

Senate Committee on Environment and Public Works
Hearing Entitled “*WRDA 2024: Stakeholder Feedback on USACE Project Partnership Agreements*”
November 29, 2023
Questions for the Record for Mr. Jimmy Hague

Chairman Carper:

1. Please elaborate on the challenges and opportunities that The Nature Conservancy has observed for non-federal sponsors partnering with the U.S. Army Corps of Engineers (USACE).
 - a. Specify which existing statutory authorities contribute to challenges and/or provide potential opportunities to address concerns with USACE Project Partnership Agreements.

Non-federal sponsors face challenges partnering with USACE due to several provisions in the Project Partnership Agreements (PPA) that are required by statute. The statutory language gives USACE little to no ability to modify the following requirements in the PPA.

1. PPA indemnification

The PPA requires that the non-federal sponsor of a USACE project must “hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors.” This requirement to indemnify the federal government forces the non-federal sponsors to assume unbounded legal and financial risks for USACE-constructed projects. Given that USACE has ultimate authority for project planning, design, and construction, this approach does not reflect an equitable allocation of liability risk and, in some cases, conflicts with state law as described in my written testimony.

The indemnification requirement is articulated most clearly in statute in section 103(j) of WRDA 1986 (33 U.S.C. 2213(j)), though it appears in earlier statutes as well, such as WRDA 1974 and the Flood Control Act of 1970. Section 103(j)(1)(A) of WRDA 1986 says, “Any project to which this section applies¹ (other than a project for hydroelectric power) shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to pay 100 percent of the operation, maintenance, and replacement and rehabilitation costs of the project, to pay the non-Federal share of the costs of construction required by this section, and to hold and save the United States free from damages due to the construction or operation and maintenance of the

¹ This section generally applies to “any project (including any small project which is not specifically authorized by Congress and for which the Secretary has not approved funding before November 17, 1986), or separable element thereof, on which physical construction is initiated after April 30, 1986” for flood control, hydroelectric power, municipal and industrial water supply, agricultural water supply, recreation, including recreational navigation, hurricane and storm damage reduction, aquatic plant control, and environmental protection and restoration. (33 U.S.C. 2213)

project, except for damages due to the fault or negligence of the United States or its contractors” (emphasis added).

WRDA 2024 should remove the “hold and save” requirement from the PPA or at least remove it in those cases where it conflicts with state law. Even without the contractual liability protection in the PPA, USACE would retain liability protections under other laws such as the Federal Tort Claims Act and Flood Control Act of 1970.

2. PPA operations, maintenance, repair, rehabilitation, and replacement (OMRR&R)

The OMRR&R requirement is in statute in section 103(j) of WRDA 1986 (33 U.S.C. 2213(j)). Section 103(j)(1)(A) of WRDA 1986 says, “Any project to which this section applies (other than a project for hydroelectric power) shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to pay 100 percent of the operation, maintenance, and replacement and rehabilitation costs of the project, to pay the non-Federal share of the costs of construction required by this section, and to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors” (emphasis added).

The OMRR&R requirement can be particularly problematic for the use of nature-based solutions. Many nature-based projects like coral reefs, oyster reefs and wetland restorations rely on natural processes and climatic conditions over which the non-federal sponsor has little control. Some of these projects, if successful, will achieve natural system functionality, requiring no additional OMRR&R beyond that of underlying easements and land ownership. In addition, in some instances where a nature-based project is damaged, it may not make sense to rebuild or replace these projects in the same location as required in the PPA, because major storms and climate change can alter the local topography and flood risk reduction and ecosystem needs.

The statute does not specify a duration for the non-federal sponsor’s OMRR&R obligation. Also, the model PPA for ecosystem restoration projects², for example, does not include how long the non-federal sponsor’s OMRR&R obligation should last. However, in practice, USACE requires the non-federal sponsor to perform OMRR&R in perpetuity. This practice is confirmed by the implementation guidance for Section 2003(b) of WRDA 2007 related to the definition of the non-federal interest. When describing the definition of a nonprofit entity, the implementation guidance says:

“For agreements addressing construction of a project, the nonprofit entity must demonstrate the capability to satisfy a sponsor’s responsibilities under the agreement, including... performance, in perpetuity, of any non-Federal OMRR&R” (emphasis added).

Congress has recognized the importance to non-federal sponsors of placing time restrictions on the OMRR&R requirement. Section 1161 of the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016 limits the “responsibility of a non-Federal interest for operation and

² U.S. Army Corps of Engineers, Model Agreement for Specifically Authorized Ecosystem Restoration Projects, issued January 18, 2017, with updates on April 4, 2022. Available at https://www.usace.army.mil/Missions/Civil-Works/Project-Partnership-Agreements/model_er/.

maintenance of the nonstructural and nonmechanical elements of a project, or a component of a project, for ecosystem restoration” to “10 years after the date on which the Secretary makes a determination of [project] success” (33 U.S.C. 2330a). Implementation guidance for this provision of the WIIN Act provided additional detail regarding the definition of ecological success. At that point, no further monitoring by the non-federal sponsor is required.

Given the lack of a statutory basis for perpetual OMRR&R and the existing statutory recognition that at least in some cases the OMRR&R obligation should end, WRDA 2024 should expand relief to non-federal sponsors from the perpetual OMRR&R requirement. To protect the federal interest in the project, you could consider tying the OMRR&R commitment to the useful life of the project. In the case of ecosystem restoration projects, the WIIN Act used meeting “the criteria for ecosystem restoration success” as a measure of the useful life of the project.

3. *PPA donated goods*

Section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b) states that credit toward the non-federal sponsor’s share of project costs “shall not exceed the actual and reasonable costs of the materials, services, or other things provided by the non-Federal interest, as determined by the Secretary” (emphasis added). In some instances, non-federal sponsors have received donations of materials from a third party to be applied to a USACE project. Because the non-federal sponsor acquired the donated materials at no cost, USACE does not fully credit them as part of the non-federal cost share, limiting the flexibility of the non-federal sponsor to partner with others in the community in order to meet its cost-share obligation.

Minor changes to the Flood Control Act of 1970 would incentivize maximum non-federal contributions to project costs, create added financial flexibility for non-federal sponsors, and better leverage federal investments in USACE projects. WRDA 2024 should amend Section 221 of the Flood Control Act of 1970 to replace the reference to “reasonable costs” with “reasonable value.” This change would also align with the rest of the Act’s focus on the “value” of contributions from the non-federal sponsor rather than the “costs.”

b. Specify USACE policy and practice, including implementation guidance that contributes to challenges and/or provides potential opportunities to address concerns with Project Partnership Agreements.

1. *Real estate acquisition*

Section 1115 of WRDA 2018 directed USACE to require a non-Federal sponsor to acquire an interest in land using “the minimum interest in real property necessary to support the water resources development project for which such interest is acquired.” This mandate is reflected in USACE policy in Engineer Regulation 405-1-12, Chapter 12, Paragraph 12-9, Determining the Appropriate Interest to Acquire. However, and confusingly, Paragraph 12-9(b)(6) says that while fee title is generally required for “fish and wildlife mitigation lands, ecosystem restoration, and other environmental purposes...a lesser, or easement estate, may be appropriate based on the extent of interest required for the operation or requirements of a project.”

In practice, USACE requires that fee title be used for beneficial use, ecosystem restoration and mitigation projects even though it is impractical and not reasonably needed in some cases.

Requests for a non-standard estate, such as an easement, require USACE headquarters review and approval and are subject to lengthy negotiations that can delay projects, permanently block projects, and/or increase project costs. As an example, much of the active floodplain in the Lower Mississippi River is privately held. To achieve widespread conservation and restoration in the region, we must partner with landowners who are committed to maintaining their investment in these lands long term. Many of them are willing to allow for conservation and restoration to occur on their land and will give the necessary land rights, but they are often not willing to sell their land, making the USACE standard requirement for acquiring all project lands in full fee title impracticable.

WRDA 2024 needs to re-emphasize the policy of acquiring the minimum interest in real property necessary and/or direct USACE districts to use the flexibility that already exists to use less than fee simple acquisition without lengthy delays caused by USACE headquarters review and approval.

2. Cost overruns

Uncertainty about total project costs can discourage potential non-federal sponsors from signing PPAs. If a project goes over budget for any reason, including reasons beyond the non-federal sponsor's control, the non-federal sponsor must continue to meet its cost-share requirement. The language of the cost-share agreement exacerbates this challenge for non-federal sponsors.

For example, despite direction in WRDA 2014 for USACE to complete feasibility studies for \$3 million or less, the feasibility cost-share agreement (FCSA) will not specify an upper limit for the non-federal sponsor's cost-share responsibility, which nominally should be no more than \$1.5 million at 50% cost-share for feasibility studies. While model FCSA language includes the "projected" costs of the study, it also says, "These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor." Even with the relatively small project costs during the feasibility study compared to project construction, the non-federal sponsor must agree to cost share an unbounded potential project cost. That level of uncertainty in a legally binding agreement with USACE can make the non-federal sponsor's participation challenging to finance.

WRDA 2024 needs to provide non-federal sponsors with the cost-share certainty Congress intended in WRDA 2014. To the extent, practicable, it should cap the non-federal sponsor's cost share for feasibility studies at \$1.5 million and direct USACE to update model FCSA language to include the maximum non-federal contribution.

3. Please provide any examples, to the extent possible, of statutory or USACE policy requirements precipitating prolonged or unsuccessful Project Partnership Agreement negotiations with a non-federal sponsor (i.e., the agreement took several months or longer to negotiate and execute, or the non-federal sponsor decided not to pursue a Project Partnership Agreement with USACE).

The Nature Conservancy (TNC) is the non-federal cost-share sponsor for the Claiborne and Millers Ferry Locks and Dams Fish Passage Feasibility Study. The study seeks to establish fish passage by reconnecting 585 miles of the Alabama and Cahaba Rivers and associated streams to

the Gulf of Mexico, providing connectivity for multiple species of fish, crawfish, mussels, and turtles, including two species of threatened and endangered sturgeon. The lack of certainty in the FCSPA about TNC's maximum cost-share responsibility was one of the most difficult aspects of the agreement to negotiate and accept. While we were able to negotiate FCSPA language that lessened TNC's financial risks, the concern about cost-sharing unknown cost overruns beyond TNC's control delayed signing the FCSPA.

The other witnesses testified to other examples of prolonged and unsuccessful PPA negotiations. In particular, Mr. Haase described several PPA negotiations the Coastal Protection and Restoration Authority has pursued with USACE.

In addition, the National Academy of Public Administration (NAPA) conducted a comprehensive review of the USACE PPA process and template and delivered its findings to the Secretary of the Army in November 2018.³ Based in part on feedback from non-federal sponsors, the report accurately described many of the causes of prolonged and unsuccessful PPA negotiations with USACE. In addition to evaluating the process for preparing, negotiating and approving PPAs, the NAPA report contained recommendations for administrative improvements based on feedback from non-federal sponsors.

Senator Fetterman

- 1. At the hearing, you spoke briefly about the burdensome requirements for the project partnership agreement (PPA) necessary for many localities catalyze a public works project with the USACE. My office has been working with stakeholders in Johnstown, PA to upgrade flood protection infrastructure along the Stonycreek, Little Conemaugh, and Conemaugh rivers. The original infrastructure is crumbling, and the city wants to rebuild in a way that allows the community to access and enjoy the river. How can we make sure that the US Army Corps of Engineers can fully consider nature- and community-based solutions in Johnstown, PA and on similar projects?**

TNC appreciates the committee's commitment to and success producing bipartisan water resources legislation emphasizing nature-based solutions to current and future flood and storm risk reduction challenges as well as ecosystem restoration. In every WRDA since 2016, the committee has advanced legislation directing USACE to consider nature-based solutions in the project planning process, benefit-cost analysis, small-scale continuing authorities programs, flood control projects for disadvantaged communities, and regional studies. While Congress has succeeded at establishing the foundational authorities for USACE to consider and use nature-based solutions to flood risks like your constituents face in Johnstown, we still find that USACE does not use nature-based solutions to their full extent and as local communities are demanding.

³ National Academy of Public Administration, 2018. The U.S. Army Corps of Engineers: An Evaluation of the Project Partnership Agreement Process.

Some USACE flood risk reduction projects are still designed primarily with built and hard infrastructure solutions first then nature-based solutions are considered later to complement the built infrastructure components. This approach does not maximize the benefits that nature-based solutions can provide and does not meet the needs of many communities who want to have multi-benefit water infrastructure projects. In these cases, it is essential for the non-federal project sponsor, local community, and their elected representatives to communicate to USACE at the start of the planning process that they want to see nature-based solutions considered as a primary project element.

USACE can support its districts in this effort by providing policy and tools to fully consider nature-based solutions throughout the planning process. While the Biden administration has taken many steps to better account for and include nature-based solutions in federal investments, it has yet to implement the Principles, Requirements, and Guidelines (PR&G) for water resources projects at USACE. The PR&G made significant changes to how the federal government plans water resources projects to help ensure they reflect national priorities, encourage sustainable economic development, and protect the environment. Despite being finalized in 2014, USACE has never implemented them. Congress can support nature-based solutions and community-led planning in Johnstown, PA, and on similar projects by ensuring USACE finalizes its implementation of the PR&G as soon as possible.

2. Also, with regards to burdens to localities, can you elaborate on your response to my question about the role of state statutory limitations on acid mine drainage remediation? In short, how do you think the issues you highlighted at the hearing might play out for an issue like acid mine drainage projects in Pennsylvania?

USACE has extraordinary capacity to address environmental concerns. It is taking on some of the largest and most challenging ecosystem restoration projects in the world so USACE may be able to confront some of the challenges acid mine drainage (AMD) poses in Pennsylvania. However, if structured like standard USACE ecosystem restoration projects, non-federal sponsors of AMD projects would encounter the same problems with the PPA that we addressed in the hearing.

First, Pennsylvania is one of the states with state law conflicts to indemnifying the federal government as required in the PPA. Therefore, it will be challenging for a state agency to sponsor an AMD project.

Also, the requirement that the non-federal sponsor conduct operations and maintenance of the project in perpetuity may be incompatible with the financial certainty many non-federal sponsors require. For AMD projects where there is an ongoing discharge of contaminated water, the perpetual operations and maintenance commitment may make it particularly difficult for the project sponsor to finance the project and terminate its obligations to the federal government in the future.

PPA reform could be a necessary precondition for any successful attempt at having USACE construct AMD projects in Pennsylvania.

Senator CARPER. Thank you for leading off for us.

Next, we are going to hear from Kirsten Wallace. Ms. Wallace is on the board of the InterState Council on Water Policy, which is committed to stewardship of our Nation's water resources. In addition to this role, Ms. Wallace is the executive director for the Upper Mississippi River Basin Association. We look forward to hearing about your experiences and those of the Association with the Army Corps.

Before you give us your statement, tell us, where are you from originally? Where did you start your life?

Ms. WALLACE. I am from Minnesota.

Senator CARPER. Now?

Ms. WALLACE. Minnesota.

[Laughter.]

Senator CARPER. Got it right the first time. Good. Well, welcome from Minnesota.

Your whole statement will be made part of the record. Go ahead.

**STATEMENT OF KIRSTEN WALLACE, BOARD MEMBER,
INTERSTATE COUNCIL ON WATER POLICY**

Ms. WALLACE. Thank you, and good morning, Chair Carper, Ranking Member Capito, and distinguished members of the committee.

My colleagues and I are here to urge Congress to remove or modify unreasonable requirements that currently restrict or deter non-Federal entities from participating as cost-share partners in implementing important water resource projects with the Army Corps of Engineers.

We are grateful for today's opportunity to underscore the need to reform the Corps of Engineers' Project Partnership Agreements, which govern the cost-share relationship between the non-Federal sponsor and the Federal Government. We believe that a more equitable approach to these relationships will improve efficiencies in project delivery, improve partnership relationships, and stimulate the Nation's ability to leverage non-Federal resources.

My name is Kirsten Wallace. I am the Executive Director of the Upper Mississippi River Basin Association, commonly referred to by its acronym, UMRBA, which supports the states of Illinois, Iowa, Minnesota, Missouri, and Wisconsin in their interState water resources planning and management of the Upper Mississippi River basin. UMRBA is a long-standing member of the InterState Council on Water Policy, and today, I am speaking on behalf of the InterState Council on Water Policy and its members.

The InterState Council on Water Policy was established in 1959, convening State and interState water resource managers and planners from across the Country. The Council evaluates policies affecting water resource management, develops solutions to commonly held challenges, and works collaboratively with Congress and Federal agencies to advance those solutions.

Many of the Council's members and partners, States, interState organizations, local entities, nonprofit and private organizations, collaborate with the Federal Government through the Army Corps of Engineers. As our Nation faces enormous challenges to our water resources, we are even more compelled to lean into our part-

nerships with the Corps to optimize our resources, our networks, our knowledge, and our ability to shape a future of prosperity.

Our ability to partner with the Corps through cost-shared projects is challenged by the liability provisions that govern the partnership between the Corps and the non-Federal sponsor. Project Partnership Agreements are legally binding documents that outline the responsibilities of non-Federal cost-share partners and the Federal Government for water resource projects.

The key impediments include requiring the non-Federal sponsor to assume complete liability for constructed projects and operations, maintenance, repair, replacement, and rehabilitation in perpetuity. This results in a completely one-sided approach to the assumption of risk that is unsustainable for the non-Federal sponsors to shoulder.

As a spokesperson for the InterState Council on Water Policy, our members want to share with you our conclusions that these issues of liability affect cost-shared projects nationwide and all of the Corps' mission areas, and that reforming project partnership agreements is in the national interest.

The Association of Fish and Wildlife Agencies has created a map, shown on the screen, depicting the States for which their laws directly conflict with the liability provisions in the Corps' agreements, the dark orange, or whether they have indirect legal barriers, the light orange. As I had discussions yesterday, I believe West Virginia should be dark orange.

As many as 22 States across the Country reported having laws against assuming the legal obligations required by the Corps. The InterState Council of Water Policy is joined by several interState organizations who are also actively working with Members of Congress and the committee to explain the need for reforming the Corps' project partnership agreements given the regional and local implications in their respective areas.

These groups include the Association of Fish and Wildlife Agencies, National Association of Flood and Stormwater Management Agencies, Coastal States Organization, Delaware River Basin Commission, the Great Lakes Commission, the InterState Commission on the Potomac River Basin, the Susquehanna River Basin Commission, the Upper Mississippi River Basin Association, the National Audubon Society, Ducks Unlimited, the Nature Conservancy, the Theodore Roosevelt Conservation Partnership, and others.

My colleague Jimmy Hague with The Nature Conservancy spoke to these issues from a nonprofit entity's perspective. My colleague, Bren Haase with the Louisiana Coastal Restoration and Protection Authority, will speak to these experiences in implementing PPAs. I will speak generally to the issues affecting the States nationally.

Indemnifying a third party, including the Federal Government, is in direct conflict with many States' constitutions and laws. It requires the non-Federal party to promise financial resources for an indeterminate liability that may occur at an unknown time, at an unknown cost, for an unknown reason. Many State constitutions preclude agencies from obligating funds without an encumbrance against an appropriation and do not allow for incurring any indebtedness of any nature on behalf of the State until an appropriation for it has been made by the legislature.

In addition, indemnification requires a State to assume liability beyond the extent to which many States' tort law allows.

The current PPA terms legally obligate non-Federal sponsors to undefined and unbounded operations, maintenance, repair, rehabilitation, and replacement for water resource projects. This is challenging for non-Federal sponsors legally to assume because the obligation extends well beyond the period of analysis and project life. This policy essentially creates a permanent Federal hold on non-Federal property.

The liability terms are problematic for cost-share sponsors in all Corps mission areas, water supply, flood damage reduction, disaster recovery, and ecosystem restoration. Although agreements have been executed and signed in many areas, that does not mean they are not problematic for the non-Federal sponsors. Sometimes non-Federal entities, States, interState organizations, local entities, or private organizations, will make the tough choice between securing financial resources to resolve a very important water resource problem over their own challenges in accepting the complete and total liability and assuming requirements in perpetuity.

Sponsors for flood management projects and water supply projects often use their revenue source to partially offset the one-sided liability of the project terms and have to accept the consequences of being perpetually beholden to the Federal Government for the project structures. We must ask whether this is appropriate; is shifting the liability from the national tax base solely and completely to a smaller tax base appropriate, especially if the project is found to be in the national interest?

Who is that tax base? Is it equitable for the Federal Government to push the complete risk to the non-Federal sponsor, whether a State, local government entity, or private organization? Non-Federal sponsors for ecosystem restoration projects often do not have an associated revenue source for the projects, so executing the agreements is much more problematic.

In 1986, Congress recognized the need for local sponsors to have greater financial and decisionmaking roles and established a new cost-share formula. My understanding is the Federal Government was risk adverse to implementing flood projects on non-Federal lands, and Congress added a requirement that non-Federal sponsors fully indemnify the Corps.

Since then, we have gained substantial experience in these non-Federal cost-sharing partnerships, and we better understand the implications to non-Federal sponsors. We are now asking Congress to reform this provision to create a more equitable approach to sharing risk. This request is not to free non-Federal entities from liability but rather to have the Corps share in that liability.

We acknowledge and underscore the value of our relationships with our partners within the Corps who are working earnestly to advance important projects. These policies tear at the fabric of our partnership by creating unnecessary conflict and inefficient use of staff and other resources, ultimately delaying, and in many cases preventing, critically important benefits to the public.

In closing, my colleagues and I are here today to urge you to remove or modify unreasonable requirements that currently restrict or deter non-Federal entities from participating as cost-share part-

ners. We believe that reasonable and equitable partnerships will increase opportunities to leverage non-Federal investments to achieve local, regional, and national water resource goals.

We call upon Congress to revise the statutes for which the Corps is using to justify these provisions, and we offer our assistance to work with you in resolving the impasse.

As Congress and the Federal Government continue to prioritize non-Federal cost-share projects, we believe that these challenges to PPA execution must be resolved so that existing and newly authorized projects can be successfully and efficiently implemented.

[The prepared statement of Ms. Wallace follows:]

**Testimony of the Interstate Council on Water Policy
Regarding the
U.S. Army Corps of Engineers
Non-Federal Cost Share Project Partnership Agreements**

**Submitted to the
U.S. Senate
Committee on the Environment and Public Works**

November 29, 2023

Good morning, Chair Carper, Ranking Member Capito, and distinguished Committee members. My colleagues and I are here to urge Congress to remove or modify unreasonable requirements that currently restrict or deter non-federal entities from participating as cost-share partners in implementing important water resource projects with the U.S. Army Corps of Engineers. We are grateful for today's opportunity to underscore the need to reform the Corps of Engineers' project partnership agreements, which govern the cost-share relationship between the non-federal sponsor and the federal government. We believe that a more equitable approach to these relationships will improve efficiencies in project delivery, improve partnership relationships, and stimulate the nation's ability to leverage non-federal resources.

My name is Kirsten Wallace. I am the Executive Director of the Upper Mississippi River Basin Association, commonly referred to by its acronym, UMRBA, which supports the states of Illinois, Iowa, Minnesota, Missouri, and Wisconsin in their interstate water resources planning and management of the Upper Mississippi River basin.

UMRBA is a long-standing member of the Interstate Council on Water Policy, and today, I am speaking on behalf of the Interstate Council on Water Policy and its members.

The Interstate Council on Water Policy was established in 1959, convening state and interstate water resource managers and planners from across the country. The Council evaluates policies affecting water resource management, develops solutions to commonly-held challenges, and works collaboratively with Congress and federal agencies to advance those solutions.

Many of the Council's members and partners – states, interstate organizations, local entities, nonprofit and private organizations – collaborate with the federal government through the Army Corps of Engineers. As our nation faces enormous challenges to our water resources, we are even more compelled to lean into our partnerships with the Corps – to optimize our resources, our networks, our knowledge, and our ability to shape a future of prosperity.

Our ability to partner with the Corps through cost-shared projects is challenged by the liability provisions that govern the partnership between the Corps and the non-federal sponsor. Project partnership agreements are legally binding documents that outline the responsibilities of non-federal cost-share partners and the federal government for water resource projects. The key impediments include requiring the non-federal sponsor to assume complete liability for constructed projects (except for when fault or

negligence is proven) and operations, maintenance, repair, replacement, and rehabilitation (OMRR&R) in perpetuity. This results in a completely one-sided approach to the assumption of risk that is unsustainable for non-federal sponsors to shoulder.

As a spokesperson for the Interstate Council on Water Policy, our members want to share with you our conclusions that these issues of liability affect cost-shared projects nation-wide and all of the Corps' mission areas, and that reforming project partnership agreements is in the national interest. The Association of Fish and Wildlife Agencies has created a map depicting the states for which their laws directly conflict with the liability provisions in the Corps' agreements or whether they have indirect legal barriers. As many as 22 states across the country reported having laws against assuming the risk legal obligations by the Corps. (See Attachment A)

The Interstate Council of Water Policy is joined by several interstate organizations who are also actively working with members of Congress and the Committee to explain the need for reforming the Corps' project partnership agreements given the regional and local impacts in their respective areas. These groups include the Association of Fish and Wildlife Agencies, National Association of Flood and Stormwater Management Agencies, Coastal States Organization, Delaware River Basin Commission, the Great Lakes Commission, the Interstate Commission on the Potomac River Basin, the Susquehanna River Basin Commission, the Upper Mississippi River Basin Association, the National Audubon Society, Ducks Unlimited, the Nature Conservancy, and the Theodore Roosevelt Conservation Partnership.

My colleague Jimmy Hague with The Nature Conservancy will speak to these issues from a nonprofit entity's perspective. And, my colleague, Bren Haase with the Louisiana Coastal Restoration and Protection Authority will speak to their experiences in implementing PPAs. I will speak generally to the issues affecting states nationally.

Indemnifying a third party (including the federal government) is in direct conflict with many states' constitutions and laws. It requires the non-federal party to promise financial resources for an indeterminate liability that might occur at an unknown time, at an unknown cost, and for an unknown reason. Many state constitutions preclude agencies from obligating funds without an encumbrance against an appropriation and do not allow for incurring any indebtedness of any nature on behalf of the state until an appropriation for it has been made by the legislature. In addition, indemnification requires a state to assume liability beyond the extent to which many states' tort law allows.

The current PPA terms legally obligate non-federal sponsors to undefined and unbounded operations, maintenance, repair, rehabilitation, and relocation for water resource projects. This is challenging for non-federal sponsors to legally assume because 1) the obligation extends well beyond the period of analysis or project life and 2) given the dynamic nature of the river ecosystem, ecosystem management needs will undoubtedly change beyond the projects period of analysis. This policy essentially creates a permanent federal hold on non-federal property.

The liability terms are problematic for cost-share sponsors for all Corps mission areas – water supply, flood damage reduction, disaster recovery, and ecosystem restoration. Although agreements have been executed and signed in many areas, that does not mean they are not problematic for the non-federal sponsors. Sometimes non-federal entities – states, interstate organizations, local entities, or private organizations – will make the tough choice between securing federal resources to resolve a very important water resource problem over their own challenges in accepting the complete and total liability and assuming requirements in perpetuity for operations, maintenance, rehabilitation, repair, and replacement.

Sponsors for flood management projects and water supply projects often use their revenue source to partially offset the one-sided liability of the project terms and have to accept the consequences of being perpetually beholden to the federal government for the project structures. We must ask whether this is appropriate – is shifting the liability from the national tax base solely and completely to a smaller tax base appropriate – especially if the project is found to be in the national interest. And, who is that tax base? Is it equitable for the federal government to push the risk to the non-federal sponsor – whether a state, local government entity, or private organization? After a project reaches its design life, should the non-federal sponsor be required to seek further approvals from the federal government for what to do with the project structures?

Non-federal sponsors for ecosystem restoration projects often do not have an associated revenue source for the projects, so executing the agreements is much more problematic.

In 1986, Congress recognized the need for local sponsors to have greater financial and decision-making roles and established new cost-share formulas. My understanding is the federal government was risk adverse to implementing flood projects on non-federal lands, and Congress added a requirement that non-federal sponsors fully indemnify the Corps. Since then, we have gained substantial experience in these non-federal cost-sharing partnerships, and we better understand the implications to non-federal sponsors. We now are asking Congress to reform this provision to create a more equitable approach to sharing risk.

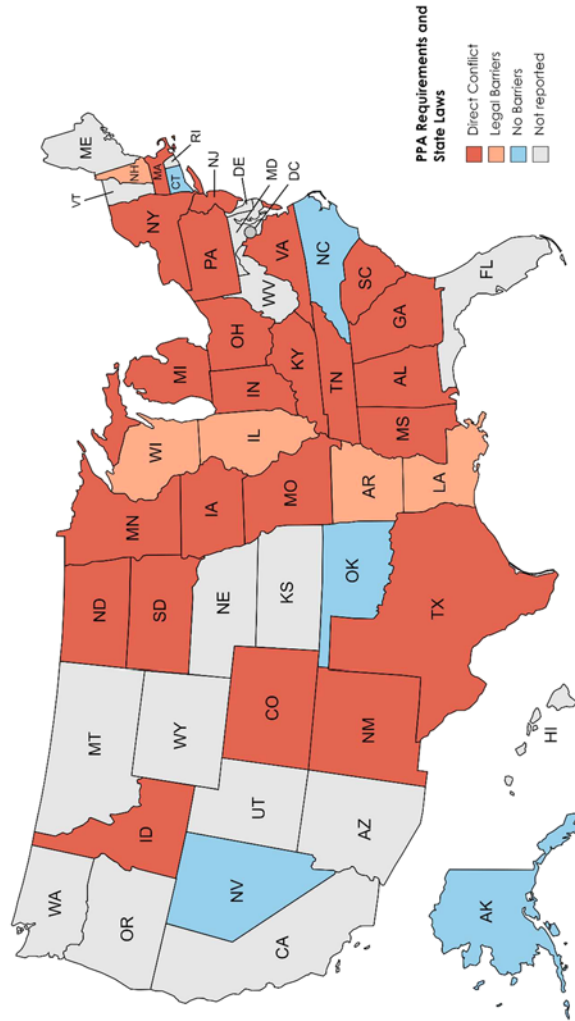
This request is not to free non-federal entities from liability but rather to have the Corps share in that liability.

We acknowledge and underscore the value of our relationships with our partners within the Corps who are working earnestly to advance important projects. These policies tear at the fabric of our partnership by creating unnecessary conflict and inefficient use of staff and other resources – ultimately delaying, and in many cases preventing, critically important benefits to the public.

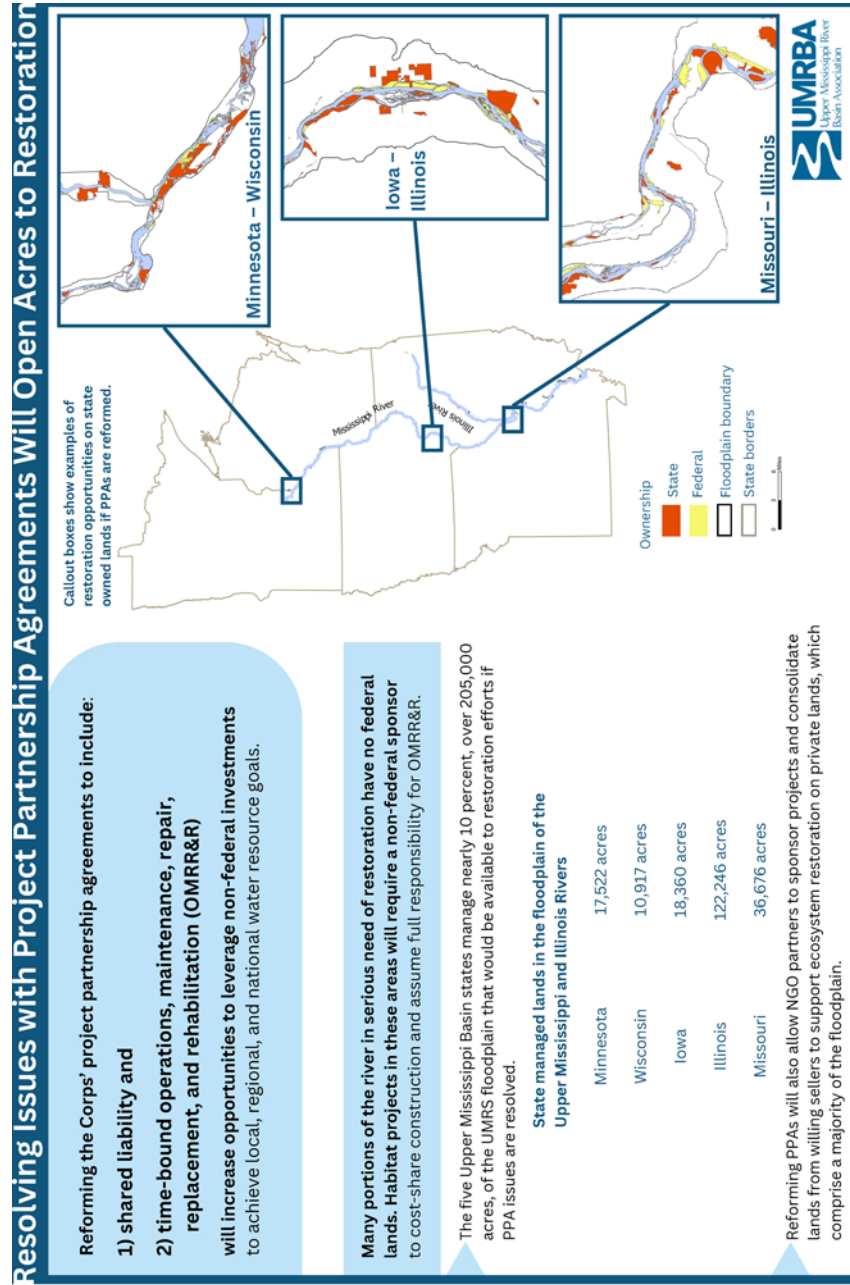
In closing, my colleagues and I are here today to urge you to remove or modify unreasonable requirements that currently restrict or deter non-federal entities from participating as cost-share partners. We believe that reasonable and equitable partnership agreements will increase opportunities to leverage non-federal investments to achieve local, regional, and national water resource goals. We call upon Congress to revise the statutes for which the Corps is using to justify these provisions, and we offer our assistance to work with you in resolving the impasse.

As Congress and the federal government continue to prioritize non-federal cost-share projects, we believe that these challenges to PPA execution must be resolved so that existing and newly authorized projects to be successfully and efficiently implemented.

Attachment A
States Having Barriers to Executing U.S. Army Corps of Engineers Project Partnership Agreements



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Senator CARPER. Thank you very much.

Last but not least, we are going to hear from Bren Haase. I understand you are the Executive Assistant to the Governor of Louisiana. Who is the Governor of Louisiana?

Mr. HAASE. Governor John Bel Edwards.

Senator CARPER. Okay. I spoke to you earlier about him. Give him our best. He testified, if I am not mistaken, before this committee about a year ago. I think he sat in that very seat. That is the Louisiana seat.

He is one of our favorites. Love it when our recovering Governors come to the Senate.

I understand you are the Executive Assistant to the Governor of Louisiana for Coastal Activities, is that right?

Mr. HAASE. That is right.

Senator CARPER. The chairman of the Coastal Protection and Restoration Authority Board. Prior to this role, you served as the Deputy Executive Director and Division Chief of Planning and Research for the Coastal Protection and Restoration Authority. I understand that you are the lead author of the Constitution of Louisiana.

[Laughter.]

Senator CARPER. No, that is a typo, I am sure. The lead author of the 2017 Louisiana Conference Master Plan for a Sustainable Coast. That is a mouthful. We thank you for that, and we thank you for being here today and participating in this hearing. We will learn from you and other witnesses in the next hour or two.

Welcome. Your entire statement will be made part of the record. Go ahead.

STATEMENT OF BREN HAASE, EXECUTIVE ASSISTANT TO THE GOVERNOR FOR COASTAL ACTIVITIES, CHAIRMAN OF THE COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD

Mr. HAASE. Thank you for that, Chairman Carper. I will be happy to relay those pleasantries to the Governor. I am sure he would extend the same to you as well.

Ranking Member Capito, members of the committee, thank you for the invitation to testify today to provide feedback on the U.S. Army Corps of Engineers' Project Partnership Agreements. As you mentioned, my name is Bren Haase, and I have the honor of serving as Executive Assistant to Louisiana Governor John Bel Edwards for Coastal Activities, as well as Chairman of the Board for the State's Coastal Protection and Restoration Authority, or CPRA.

CPRA was created by the Louisiana legislature specifically to partner with the Corps of Engineers on coastal protection and restoration projects. Our mission is to provide both hurricane protection and ecosystem restoration for South Louisiana. A strong partnership with the Corps is essential for coastal Louisiana to meet its coastal protection and restoration goals. We successfully partner with the New Orleans District of the Corps to deliver some of the most transformative coastal infrastructure projects in the Nation.

Since its establishment in 2007, CPRA has signed approximately 15 PPA-related agreements and 25 feasibility cost-share agree-

ments, design agreements or memoranda of understanding or agreements with the Corps of Engineers. These cover a variety of project types, and our experiences with them inform my testimony today.

To that end, I would like to emphasize five key points. The first of those is the inertia of the status quo. This is often experienced by CPRA when negotiating PPAs with the Corp. We are generally presented with a take-it-or-leave-it scenario, a model agreements that may not be best for either partner or most efficient to advance a project. The alternative generally is to negotiate changes to the model PPA through the district up through the division and all the way to the headquarters, a prospect that can be difficult, confusing, and of course, cost precious time and money that none of us can afford.

Non-Federal sponsors should be true partners, able to provide meaningful input on the terms of the partnership. More flexibility should be delegated to district managers to negotiate provisions that make the most sense for delivering projects as efficiently as possible.

Second, land rights. Acquiring real eState rights and full fee title is impractical and not reasonably needed for many projects. Over 80 percent of coastal Louisiana's wetlands are privately owned. To achieve widespread coastal protection and restoration, we must partner with those landowners, most of whom will give the necessary land rights to complete coastal protection and restoration at no cost. We have been doing such projects in Louisiana for decades without acquiring property in fee title, and it has worked. There is no reason we can not do the same in partnership with the Corps of Engineers.

Third, I will hit on O&M. There are several acronyms that have been used. In deference to the Chair, I will not go through that again.

Senator CARPER. The Chair wants to thank you for that.

[Laughter.]

Mr. HAASE. We certainly share the concerns expressed by my colleagues here. There are other problems that sometimes arise related to O&M in project design or construction, which are generally led by the Corps of Engineers, that can carry over into a finished project. Of the terms in most PPAs, the Corps can require the non-Federal sponsor to conduct operations and maintenance for such deficient projects.

The Corps should not be able to transfer a project with problems to a non-Federal sponsor, particularly when those problems have been identified previously during design or construction of that project.

We also at times have paid for and conducted operation and maintenance on projects that are fully funded by the Corps, because they lack the necessary funding at the time to complete those activities. PPAs are generally silent on how to treat those expenditures. It would be helpful to have provisions to allow the non-Federal sponsor to receive credit against those expenditures for such works.

Fourth, indemnification. This has been discussed a great deal, and I will just reiterate that we certainly agree with my colleagues

here at the table today, and would reiterate that there needs to be a more equitable sharing of potential risk among project partners.

Fifth, I will hit on cost-sharing. CPRA, like other non-Federal sponsors across the Country, must ensure that our limited financial resources are leveraged to the full extent. The use of deferred payment agreements crediting MOUs and the ability to perform work in kind have been extremely helpful in partnering with the Corp in the recent past.

That said, some aspects of cost-sharing can be a challenge. Financial transparency provided through PPAs is essentially a one-way street. The Corps can examine the books of the non-Federal sponsor in detail, while the non-Federal sponsors has no such reciprocal ability. As a result, the non-Federal sponsor has to meet an unknown cost-share requirement. This has already been discussed. It just makes common sense for this arrangement to be reciprocal, since both partners are bearing the cost of implementing these projects.

In conclusion, CPRA recommends this committee encourage the Corps to advance policies that align with the following two general principles: giving greater voices to the non-Federal sponsors, and increasing transparency. To do so, we suggest greater delegation of authority to district commanders to negotiate PPAs while allowing for streamlined appeals to higher levels of the Corps when needed.

We certainly appreciate the Corps for being one of CPRA's most important project partners in our mission to protect and restore Louisiana's coast. We have been tremendously fortunate to be able to work with the New Orleans District, which has put on the ground some of the most transformative Corps projects across the entire Nation through these agreements.

CPRA is confident we can work even more productively with the Corps to deliver projects for our State and Nation with improved PPAs.

Thank you for your time and attention. I look forward to answering your questions.

[The prepared statement of Mr. Haase follows:]

**Testimony of
Bren Haase
Executive Assistant to the Governor of Louisiana for Coastal Activities
Chairman of the Coastal Protection and Restoration Authority Board**

**Before the
Senate Environment and Public Works Committee
Hearing titled
*“WRDA 2024: Stakeholder Feedback on USACE Project Partnership Agreements”***

November 29, 2023

Chairman Carper, Ranking Member Capito, and Members of the Committee, thank you for the invitation to testify today to provide feedback on the U.S. Army Corps of Engineers' (Corps) Project Partnership Agreements (PPAs).

My name is Bren Haase, and I have the honor of serving as Executive Assistant to Louisiana Governor John Bel Edwards for Coastal Activities, as well as the Chairman of the Board for the state's Coastal Protection and Restoration Authority (CPRA).

In many ways, CPRA was explicitly created by the Louisiana Legislature to partner with the Corps in expediting improvements to hurricane protection infrastructure following Hurricanes Katrina and Rita and to assist in the recovery and sustainability of our state's coastal communities. CPRA's larger mission is to provide hurricane protection for our coastal communities and ecosystem restoration to counteract the widespread wetland loss that threatens our homes and businesses, natural resources, and a way of life. To achieve these objectives, CPRA provides a comprehensive response to our coastal crisis by developing, updating, and implementing a 50-year, \$50 billion Coastal Master Plan to address these risks and challenges in an integrated fashion.

A strong partnership with the Corps is essential for coastal Louisiana to thrive into the future. Our ambitious coastal master plan calls for large scale investments in ecosystem restoration and hurricane protection infrastructure that can only be accomplished in partnership with the federal government. We have proudly and successfully partnered with the Corps through the New Orleans District to deliver some of the largest and most significant hurricane risk reduction projects in the nation and continue to work side by side on new projects to restore essential landscapes and reduce economic risk to communities across south Louisiana. Our Coastal Master Plan envisions a strong and effective collaboration with the Corps, which is our most prominent federal partner. Two of the Corps' primary missions, flood control and ecosystem restoration, align directly with the mandate of CPRA in coastal Louisiana. Without the Corps, the State of Louisiana will not be able meet its coastal protection and restoration goals. Simply put, the Corps is a partner that the coastal program cannot do without.

Before CPRA was established, local levee boards in the state were the primary signatories for risk reduction projects in South Louisiana, signing at least 40 cooperative agreements of some type dating back to 1965. Typically, these levee boards felt compelled to either go along with the standard Corps PPA, or forego the opportunity to leverage federal funding for their communities. However, when CPRA was established, the State of Louisiana began negotiating agreements with the Corps that would result in effectively built projects that could be managed in a sustained way. As the primary non-federal sponsor (NFS) for such projects in coastal Louisiana, CPRA was positioned to negotiate directly with the Corps on many projects. We have also provided assistance on PPAs to localities such as Amite River Basin Commission with the Amite Rivers and Tributaries project and to other states that are pursuing their own ecosystem restoration programs with the Corps.

Since the inception of the agency in 2007, CPRA has signed approximately 15 PPAs or amendments thereto, and 25 Feasibility Cost Sharing Agreements, Design Agreements, and

Memoranda of Understanding (MOU) and Agreement. These arrangements have spanned a variety of project types, including structural risk reduction to counter storm surge, coastal ecosystem restoration projects to rejuvenate eroding marsh or barrier islands, and even the first-of-its-kind major effort to facilitate nonstructural resilience measures such as home elevation and flood proofing of businesses. While this experience has allowed us to accomplish many critical projects together, it has also provided us with a perspective that the Committee may find valuable about where positive progress has been made and where additional improvements may be warranted when it comes to Corps policy. Just as CPRA and the Corps' missions align, so do our sense of urgency, our shared sense of stewardship for limited financial resources, and our lasting commitment to community preservation in the face of increasing risk. In that spirit I offer these constructive recommendations and reflections.

Today's hearing focuses on PPAs. PPAs are an important tool the Corps uses to set the terms and conditions for the construction of a project or a separable element of a project. Over the years Congress has provided, by law, certain flexibilities in PPAs recognizing the unique set of circumstances project sponsors, such as CPRA, can face. However, these are underutilized by the Corps. I believe in order for our coastal program to maximize its successful partnerships with the Corps, the Corps must more consistently deploy these flexibilities to the benefit of our common goals.

The Corps can increase the effectiveness and success of its partnerships with states by fully employing the policy flexibilities that Congress has provided by law to tailor PPAs, and other agreements, to fit the particular situations of projects and the specific strengths and limitations of the NFS. Local sponsors have their own legal or policy considerations when committing to multi-million and multi-billion dollar project partnerships. It is imperative that the Corps allow for agreements to reflect the realities and needs of the NFS. The Louisiana coast is a completely different landscape than the beaches of Delaware or the mountains in West Virginia. It is not prudent for the Corps agreements to be rigidly designed as "one-size-fits-all," particularly given the increasing diversity of the Corps missions and suite of projects it executes across the entire country. Furthermore, the Corps can ensure these partnerships are strong by increasing transparency related to such agreements.

In order to provide the Committee with our perspective on the NFS experience with PPAs, I will discuss the challenges CPRA has encountered over the last sixteen years, identify areas where progress has been made, point out opportunities for facilitating greater involvement from NFSs, and suggest recommendations for the Committee to consider.

The primary challenge a NFS faces is that while the Corps is a partner in a project, the Corps can seem inflexible and overly committed to the status quo. While a default policy may be appropriate most of the time, exercising discretion to deviate from the default can sometimes improve the whole project. However, it often seems as if the NFS is forced to go along with the default, or forego the partnering opportunity.

One example is the \$6.5 billion Southwest Coastal, Louisiana project for which a PPA was signed by the CPRA Board on June 21, 2023. As this PPA process began, CPRA was

informed that any “substantial deviation” from the model PPA language would require approval from Corps Headquarters. Despite there being good reason for the PPA to reflect the distinctive needs of the project, elevating multiple issues to that level would have been time consuming, cumbersome, and perhaps even counter-productive. CPRA had multiple issues with the model language, particularly with one clause that forced us to waive reimbursement for the value of real property interests and relocations that exceeds thirty-five percent of construction costs for the National Ecosystem Restoration component features. We do not agree with that waiver, but with the model language in place we were unable to change it. CPRA faced the threat of project delay or lost credit, so we had to get the PPA executed. CPRA had to move forward under protest on an issue that could have been resolvable. All in all, the concept that PPAs cannot reflect unique circumstances and must instead adhere to “model language” that the NFS has minimal input on is a problematic way of conducting business, particularly on major projects costing in the billions. These are extremely important and time sensitive issues that we are working on to save our communities and coastal lands. We should be a true partner with the ability to provide meaningful input on the terms of the partnership. After all, the NFS contributes in a major way by bringing the thirty-five percent cost share to the table for a typical Corps project.

It is important to get the terms of a PPA right on the front end because it is very difficult to change a signed PPA. Signing a PPA is, of course, an indication of a long-term commitment. The good news is that the Corps can be willing to change a PPA, in certain rare circumstances. However, the updates to the PPA generally go in one direction – the Corps’. If the Corps needs to insert new guidance or resolve an issue that has been unfavorable to it, the Corps will strongly encourage the NFS to agree to the necessary updates. For example, the Corps asked CPRA to make changes to the PPA for the Morganza to the Gulf of Mexico Project relative to Hazardous, Toxic, and Radioactive Waste (HTRW) issues. These changes were accommodated to advance the project in a timely manner. This request for change was in response to CPRA successfully pointing out that prior model PPA language did not make the NFS responsible for cleanup of certain substances. The Corps, relying solely on unwritten Corps policy, originally required that the NFS conduct and fully pay for HTRW cleanup activities for which it was not contractually obligated. In response, the Corps modified the model PPA language to make HTRW responsibilities more onerous on the NFS. Referencing unwritten Corps policy, the Corps contended it was only correcting the language to reflect the actual policy. On the other hand, if the NFS encounters an issue with a PPA, even one long predicted, it can be dissuaded from re-negotiating a PPA for fears that it will result in negative outcomes. To improve this dynamic, the Corps should either be more receptive to NFS requests at the front end, or allow for an easier path to PPA updates that can be favorable to the project.

The stakes for signing PPAs continue to rise, particularly given the relatively recent policy change of the Corps to require into perpetuity the Operation, Maintenance, Repair, Replacement, and Rehabilitation, known as OMRR&R, which is usually well beyond the designed life of a project. While ensuring that NFSs are capable of operating and maintaining a project is important, the indefinite commitment is excessive, particularly for ecosystem restoration projects. Certain project types, such as natural infrastructure or ecosystem restoration, have to evolve with the changing conditions over time. It is not always prudent to

maintain the same status that a project had upon the completion of construction, because the environment is a dynamic place. Instead, it would be better if the Corps returned to the policy of requiring OMRR&R for the duration of the project life. That way, NFSs could have greater confidence in the scale of the commitments, as well as the wisdom of such efforts. Greater certainty will allow the implementation of more projects to the benefit of our nation's communities and environment.

Additionally through PPAs, the Corps puts the NFS in a difficult position when there are design or construction deficiencies that were derived from Corps or Corps contractor actions. The Corps requires OMRR&R for a project with no exit clause in the PPA for the NFS to avoid being required to pay for solving the problems resulting from such deficiencies. The Corps should not be able to transfer a project with unreasonable problems to a NFS, particularly when those design or construction problems have been identified prior to the transfer and have been proven valid. CPRA has experienced that challenge with respect to certain elements of the Hurricane Storm Damage Risk Reduction System (HSDRRS) environmental mitigation efforts, for example. PPAs should include criteria that ensure that OMRR&R is not a method to transfer the cost of project problems to the NFS.

In a similar way, the Corps indemnification clauses within PPAs are challenging as the provisions shift liability to the NFS even for projects that were fully designed and constructed by the Corps. This issue applies to every project. While the NFS should be willing to assume a degree of liability, the Corps should not be absolved for situations where its design or construction was deficient.

A top issue for CPRA is ensuring that our limited financial resources are leveraged to full effect. Cost sharing is a challenge with the Corps for a variety of reasons. One difficulty is that the transparency provided through the PPA process is one-way. The Corps can examine the books of a NFS in great detail; the NFS has no such ability to peer into the Corps' financial statements to evaluate their expenditures. As a result, the NFS is beholden to cost sharing at whatever level of efficiency the Corps can execute. If the Corps' cost rise, so too must the cost to the NFS. With construction costs dramatically increasing as a result of inflation and other factors, CPRA's ability to meet the cost share for our suite of projects, particularly as they enter the major construction phases, is a top concern. We should be able to have greater confidence that the Corps' expenditures are reasonable. After all, CPRA has found it beneficial to vet our project expenses with the Corps in order to gain assurance that the Corps will give due credit for such work. This exchange is helpful and provides confidence in the partnership. In the same way, we should have the ability to examine expenses and identify areas where the NFS is best positioned to deliver effectively, and vice versa. This should not be an impossible request. The State of Louisiana has been able to get reciprocal audit rights with other federal agencies for similar projects through the Coastal Wetlands Planning Protection and Restoration Act (CWPPRA) program – though the Corps has resisted this despite being a key federal agency within CWPPRA. This ability allows the NFS to review, in the same way as the federal entity can, what the Corps calls the “reasonableness, allocability, and allowability” of costs incurred when it evaluates a NFS' Work-In-Kind (WIK) efforts. It is common sense to give the NFS the

reciprocal ability given that the NFS will be accountable for coming up with extra funding per the cost sharing agreement if the project costs escalate. As such, additional transparency into costs is an important area for improvement with Corps PPAs.

Despite these challenges, CPRA has been successful in securing positive changes related to PPAs. The Corps' recent publication of the PPAs signed across all districts was a beneficial shift for empowering NFSs to negotiate PPAs on better terms. That transparency provided models for projects to look to, as well as allowed accommodations given in previous negotiations to be used in other similar cases (for example, PPAs for Florida Everglades could be instructive to Louisiana's coastal efforts). However, for years the Corps was reluctant to provide such disclosures even though it was specifically required by Congress to do so by the Spring of 2008 through enactment of the provisions in 42 U.S.C. §1962d-5b(g) by the Water Resources Development Act (WRDA) of 2007. Only after CPRA filed multiple Freedom of Information Act requests and threatened to sue in 2011 to enforce the WRDA 2007 provisions did the Corps finally release the PPAs and publish them on the internet. Now, NFSs have the ability to draw from the experience of NFSs working with other Corps Districts and Divisions, instead of operating in isolation. Further information sharing related to agreements should serve future and prospective NFSs well.

CPRA has also advocated for changes related to PPAs that have been adopted for other Corps projects nationwide. When Congress passed the Bipartisan Budget Act of 2018 (Public Law 115-123), CPRA requested a modification to the deferred payback interest provisions for the West Shore Lake Pontchartrain Risk Reduction Project, which was agreed to by the Corps and resulted in a nationwide change to the model agreements. We credit the Corps for recognizing the merit of these changes and applying them to other projects. This example shows how open dialogue between the NFS and Corps can have benefits across the board.

Congress has also provided valuable authorities to assist the NFS in engaging on PPAs. A longstanding, fundamental challenge related to signing PPAs is the financial commitment they represent. Fortunately, Congress has been working to give NFSs a greater ability to leverage funding sources to execute projects. A significant example was Section 8149, Use of Other Federal Funds, authorities in WRDA 2022. While guidance from Corps Headquarters is pending, the plain reading of the section shows that the paradigm has changed. Previously, the Corps would look to statute or other agencies for explicit permission that a funding sources with a federal imprint could be used by the NFS for cost sharing. Now, Congress has directed the Corps to allow such funds to be used by the NFS, as long as the funds are directed to similar purposes, unless federal law clearly prohibits the funds from being match eligible. For CPRA, this change in perspective means that funding streams like the Council-Selected Restoration Component of the RESTORE Act and energy revenue sharing such as the Gulf of Mexico Energy Security Act funds clearly can be used to meet our cost share requirements. While those funding sources had not been deemed ineligible by the Corps to date, CPRA believes it is beneficial to prevent that issue from ever arising. CPRA could envision a scenario whereby a project's funding source could be ruled ineligible, resulting in the NFS having to withdraw from the partnership even with the necessary funding in place as a result of such a technicality.

CPRA encourages the Committee to explore additional opportunities to improve the outcome of PPAs. Right sizing land rights requirements is a priority for CPRA that would resolve an impasse that has halted projects in coastal Louisiana. Over eighty percent of our coastal wetlands are privately held. To achieve widespread conservation and restoration, we must partner with landowners who are committed to maintaining their investment in these lands long term. While these entities have property rights that they are reluctant to give up, many of them are more than willing to allow for conservation and restoration to occur. In fact, some landowners would give the necessary property rights to complete a restoration project to the state for free. But these landowners are not willing to sell their land, so the Corps' standard requirement for acquiring all project lands in full fee title is impracticable. This impasse has resulted in the underutilization of the Louisiana Coastal Area program established in WRDA 2007 (Public Law 110-114). For ecosystem restoration projects in such settings, we encourage the Corps to use the flexibilities Congress has provided them to only require the minimum property rights necessary to conduct a project.

Another related issue the Committee should consider addressing through statutory changes would be to allow NFSs to accept donations. For the North Lake Boudreaux CWPPRA project, the local parish wanted to provide funds because it would help with a levee project on a similar footprint. However, given the problem of "augmentation of appropriations," the Corps was unable to accept those contributions. This limits our ability as the NFS to partner and leverage resources, which would be particularly helpful with the Louisiana Coastal Area program, for example.

It would be helpful for the Committee to provide greater clarity on the ability of the NFS to negotiate a cost sharing plan for the LERRDS, WIK, and other creditable work performed by the NFS. In many instances, the NFS has advanced the project in recognition of the project's importance and the anticipation of Congressional authorization. Yet it is very difficult to receive the due credit for these expenditures, as it is typical Corps policy to recognize credit for work conducted only after a PPA is signed. Time is a scarce resource impeding the success of our coastal mission, so CPRA cannot wait to get to work on these critical projects. As a means to overcome the time-intensive process, CPRA has worked to broker crediting MOUs with the Corps in advance of PPA execution. Getting these additional agreements in place has proven to be worthwhile – versus letting creditable work go unaccounted for – but there is a cost in time, effort, and funding to broker these agreements. Therefore, it would be helpful if there were better guidance for implementing such efforts into the PPA so that there would be confidence that credit could be realized. Additionally, we need the ability accomplish cross-crediting as allowed by Section 1020 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) at the onset, so that relevant additional work a NFS provides through the project delivery process could be leveraged to other projects, without an indefinite negotiation after the fact. The result of these abilities would be expedited projects, that could conceivably cost less given the reduced inflationary risk, for example.

Congress has authorized the Corps to respond to a natural disaster by implementing, repairing, or rehabilitating certain projects at full federal expense. The State of Louisiana,

having suffered from some of the nation's worst examples of natural disasters, greatly appreciates how Congress has assisted our state in such instances. As the NFS for such work, CPRA is proud to partner on these recovery and other full federal efforts, such as the required mitigation for the Mississippi River Gulf Outlet. However, it is unclear how the Corps will compensate the NFS in such situations where the LERRDs or WIK are provided by the NFS. Reimbursement was difficult to receive and required extensive negotiation all the way through Corps Headquarters to implement on the New Orleans to Venice Hurricane Risk Reduction and New Orleans to Venice Non Federal Levee projects. Congress should better establish other helpful paths to positive resolutions, such as the ability to cross credit efforts to other projects, which would be particularly helpful for NFSs such as CPRA that lead on multiple Corps endeavors. For example, a similar use of such policy would be beneficial to initiating the critically important Mississippi River Gulf Outlet (MRGO) ecosystem restoration project that Congress supported in WRDA 2022. Even though MRGO ecosystem restoration is at full federal expense, state-led projects can still directly benefit the federal project and should be given due credit. Implementing clarity for such efforts could inspire greater efforts and stronger contributions from the NFS to improve these types of projects.

Additionally, it would be productive for Congress to also consider the situation where the NFS provides operations and maintenance (O&M) for fully federally funded projects at its own expense. When the Corps does not receive adequate funding for O&M, whether through its budgeting or through the Congressional appropriations process, it turns to the NFS to conduct its required O&M. Unfortunately, the PPA can be silent on how to treat these O&M expenditures. This is the case for CPRA with the HSDRRS project, which has required predictable, but unfunded, O&M on components such as the Western Closure Complex. While the NFS certainly wants to keep these sizeable federal infrastructure investments functioning at a high level, it would be helpful to have a provision to allow the NFS to receive credit for such work. After all, those dollars could have been put to use on other beneficial projects.

Another opportunity the Committee should consider is better establishing the timeline for when interest is initiated for Deferred Payment Agreements. There is often uncertainty on how long a project will take to be completed given the Corps' reliance on annual and supplemental appropriations, which are affected by many factors beyond the Corps control. Thus, some projects can be started but remain incomplete for years, exposing the NFS to the challenge of compounding interest. Having a clear start date for such interest would be helpful, and it has been extremely beneficial for Congress to provide the ability to renegotiate these costs in certain instances.

In conclusion, in an effort to improve the ability of NFSs to reach durable, beneficial agreements with the Corps, CPRA recommends that Congress support policies that align with the following two principles: giving greater voice to local project sponsors and increasing transparency. Projects in Louisiana's coast operate in a unique social and ecological environment that does not fit neatly with a "one-size-fits-all" approach. Our coastal wetlands are very different from other landscapes such as the prairie pothole region, for example. The needs of flood control projects may differ greatly from those of ecosystem restoration, so the

Corps should be open to modifying PPAs accordingly. At the same time with greater Corps transparency, a NFS – and Corps Districts – could learn from other projects that dealt with a similar dynamic in a creative way. Cross-pollination of ideas would be fruitful for NFSs.

To achieve these aspirations, CPRA recommends policies that empower the District Commanders, while allowing for appeals to higher levels of the Corps when appropriate as a recourse. Congress should encourage the Corps to delegate authority to the District to make language changes to the model PPAs. The District is closest to the action, and the District Commander is authorized to make the appropriate calls for the benefit of the District and projects within its bounds. In order to get the flexibilities we need, District Commanders need to be able to get to yes. If something must be elevated to the Headquarters level, then there should be a streamlined process.

To conclude, CPRA would like to express its sincere appreciation to the Corps for being the most prominent federal partner with our mission to protect and restore Louisiana's coast. We have been tremendously fortunate to be able to work with the New Orleans District (MVN) of the Corps. MVN has put on the ground some of the most ambitious and impactful Corps projects across the entire nation. CPRA is confident that MVN will continue to work with us to deploy additional transformational projects that will allow our coastal communities and ecosystems to withstand significant risks. CPRA knows that we will not be able to maximize the sustainability of our coast without continuing to work closely with the Corps. We recognize that the Corps does operate under constraints with regards to PPAs. After all, the Corps can change its policies, but it relies on Congress to change the requisite laws. Therefore, we encourage the Committee to improve the Corps' ability to be transparent and flexible. Those improvements will serve to facilitate even greater partnerships and ultimately positive results for the nation.

Senator CARPER. Thank you for your testimony. It is great to see you, and to welcome all of you today.

The first question I am going to ask is for all the witnesses. This is a question I am going to come back and ask you to answer for the record, not today, but for the record. I think in your testimony you had already begun to answer it fairly well.

The question I am going to ask you to answer for the record is, would each witness briefly elaborate on the challenges and opportunities you see in partnering with the Corps? Your views are particularly relevant as we are beginning to develop WRDA 2024. If you will do that for the record. We will have some other questions for the record, and will talk about that at the end of the hearing.

As my colleagues know, we are always looking for, when we have a diverse panel, we are looking for consensus, like where you agree. Sometimes people think, well, repetition is a bad thing. Not necessarily. You have been pretty consistent talking about cost-shares, and cost overruns, who bears the responsibility. I think there is a lot of agreement on some of the indemnification issues.

Let's just start off, Mr. Hague, with you. Just pick maybe three areas that you think are important areas where you think there is consensus amongst the three of you that is critically important and that we should take seriously those points? Go ahead. Give us three good ones.

Mr. HAGUE. Absolutely.

Senator CARPER. Again, repetition is not a bad thing.

Mr. HAGUE. Absolutely. I will repeat a lot of the things I think you have heard from the witnesses today, plus were included in my statement. I think the hold and save clause, as you have heard, is particularly problematic for all the sponsors to agree to that really does seem to be an unfair balance of a legal liability that we are forced to take on as sponsors of these projects.

Two, that unbounded nature of the operations and maintenance commitment, which I should also point out, you do not always fully know the extent of that commitment until the project is fully constructed and the Corps presents you with the operations and maintenance manual. You have to agree, when you are signing the agreement, before construction even starts to those open-ended O&M obligations.

Those would be the two high points that I would emphasize, and would love for you to focus on in this next WRDA bill.

Senator CARPER. I want one more. You can think about it. While you are thinking, we will turn to Ms. Wallace.

Ms. WALLACE. I agree with Mr. Hague, the indemnification hold and save clause is critical to reforming as well as unbounded operations and maintenance. To echo Jimmy's point, you sign onto those agreements when planning is 35 percent done, and the Corps remains in control of the rest of the project and who the construction contractor is, et cetera.

Those two issues are really necessary for Congress to act on.

Senator CARPER. You have one more. Think about it and we will come back to you. You do not get out of here without it.

Mr. Haase?

Mr. HAASE. Yes, sir, thank you, Senator. Yes, I want to add to those the point that I brought up in my oral testimony related to

the transparency and what a final bill might actually be. We talked about cost overruns, increasing costs associated with negotiating PPAs, but also in project implementation. It is often difficult for the non-Federal sponsor to get a very clear picture of what essentially the bill due will be.

There is a theme, I think, related to all these three issues, and that is certainty and predictability. All three of these things relate to uncertainty, which increases risks, obviously, on a non-Federal sponsor in delivering these projects and being able to make good on the commitments that we make by signing those.

Senator CARPER. Okay. Let me stick with you for another minute or two, Mr. Haase. I think one of my questions was, I was going to ask you to please let us know what you think the Coastal Protection Restoration Authority considers before signing an agreement with the Corps. I think you have spoken to that. As a followup, how do you strike the balance between moving quickly and moving deliberately to advance large scale coastal restoration and protection projects?

Mr. HAASE. That can be a difficult balance to strike, as you all certainly are aware. As I mentioned in my oral testimony, sometimes we feel like we are stuck with a sort of a take-it-or-leave-it kind of approach, where we have a model PPA before us, there is a tremendous need across the Country in all of our States, certainly in Louisiana, where we have experienced natural disasters just like other parts of the Country, there is a tremendous need to respond to those and protect our citizens from storm surges, flooding, and restore our ecosystem for all the reasons that is important.

There is a calculus that has to be gone through essentially to evaluate the risk of delaying those kinds of projects and having citizens remain at risk into the future or going ahead and in some cases basically holding our noses and agreeing to terms that we might not particularly want to agree to, so we can get projects done.

There is no science to that, that is probably more art than science. In general, we have moved forward where we needed to for the good of the citizens of the State of Louisiana to get projects on the ground that will help reduce risk to them and improve the ecosystem in which they live.

Senator CARPER. Good, thanks. I am going to go back really quickly, Mr. Hague, I gave you and Ms. Wallace the opportunity to give us three areas where you think there is a great deal of consensus and agreement. You have one more, each of you. do not pass it by, go ahead.

Mr. HAGUE. I would love this committee to look at flexibility in meeting the cost-share requirements. In the last WRDA bill, you did tackle this a little bit in allowing sponsors to use other Federal funds that meet the complementary purposes of the project.

The other place I would love to have some attention is when sponsors have material that they have received as a donation that can be applied for the purposes of the project. A lot of times the Corps does not give the sponsor full credit for bringing those materials to a project. That could be a simple thing for this committee to fix in the next WRDA bill and give sponsors a lot more flexibility now to meet the requirements.

Senator CARPER. Good, thank you.

Very briefly, Ms. Wallace, one more shot.

Ms. WALLACE. Lean into partnerships and encourage the Corps to provide collaborative leadership along with the local sponsor.

Senator CARPER. Thank you.

Senator Capito, and after Senator Capito has asked her questions, we are going to turn to the Senator from another large State, Rhode Island. Senator Whitehouse, welcome today. Then Senator Ricketts. Thank you.

Senator CAPITO. Thank you.

Mr. Haase, you have in your capacity or prior capacity actually negotiated one of these PPAs, is that correct? More than one?

Mr. HAASE. Yes.

Senator CAPITO. Okay. When you have had a disagreement, and you say that you have to work out, you get the model and then you try to, what is the length of time to try to overcome that disagreement? Does it ever get to the point where you never really do? How have you worked those out in the past?

Mr. HAASE. We do have a lot of experience in negotiating those, Senator, thank you for the question. It can take quite a long time, it can take months to negotiate the terms of these agreements, of course. That is where sort of the calculus of weighing the advantages, perhaps, to negotiating better terms for the non-Federal sponsor in these agreements, does it outweigh the potential risk, of course, of not getting a project done, or having that project being delayed and those costs being increased or perhaps become infeasible in some way.

In terms of kind of the mechanism for negotiating those, we work very closely with our local district, the New Orleans District, obviously, to try to negotiate those terms. At times we have had to bring those negotiations to the division and again up to headquarters, often, as well.

Senator CAPITO. Have you ever walked away from one? Have you been able to get disagreements put to rest?

Mr. HAASE. I do not know if we have ever walked away from one. That is a good question. I am not aware that we have. We have signed many under duress, I would say. I do not know that we have walked from any. I would have to get back to you.

Senator CAPITO. I was just curious.

Then, if you were a first-time non-Federal partner looking at this, what one piece of advice would you give a first-time applicant to become a partner with the Corps, under these circumstances that we have now?

Mr. HAASE. If I might take the liberty of mentioning two things.

Senator CAPITO. Of course.

Mr. HAASE. I would say be aware of what other non-Federal sponsors around the Country are agreeing to, know what those other agreements look like around the Country, to learn from those experiences and negotiations that other non-Federal sponsors have gone through.

Second, I would say it is imperative to have a very good working relationship with your local district, the district commander. They of course are the ones that will elevate disagreements to division and to headquarters, and they can be your best advocates at times.

Having a good, trustful working relationship with the districts is very, very important.

Senator CAPITO. Thank you.

This is for the panel. This is on the hold and save language. I mentioned in my opening statement, we have gone through this, but I am going to dig down a little bit into it. The 1986 law requires that PPAs include hold and save language. This language indemnifies the Corps except for when damages are due to the fault or negligence of the Corps.

In thinking about this, I am trying to think, Mr. Hague, I will go to you first, what kind of circumstance could occur that would not be fault or negligence that would be an exception where the liability would fall to the non-Federal partner? I am trying to envision this.

Mr. HAGUE. Thank you for the question. Right. It is a difficult question to answer with specific examples. When I have talked to lawyers about the hold and save clause, in a lot of ways they are most worried about those sort of unforeseen and unimaginable instances, which is why it is particularly problematic, because it is a perpetual indemnification of the Federal Government for any reason except where the non-Federal sponsor, who has the burden of proof, can show that the Corps was negligent.

I think that requirement is particularly problematic for non-Federal sponsors for a couple of reasons that you have heard today, one of which is, the Corps does retain a lot of the authority for filing decisions around planning and execution of these projects.

When you have a situation of a partnership where one partner, the Corps, has so much control over project design and execution, and the other partner has to indemnify them and should have the burden of proving fault or negligence, that is a really tough balance to swallow for a sponsor, not to mention some of the State law objections that you have heard mentioned as well. That creates specific challenges for States where those conflicts exist.

Senator CAPITO. Right. Ms. Wallace, do you have any examples of things that you have thought of, or your group has thought of, that might hold to these exceptions?

Ms. WALLACE. Yes, and I think Mr. Haase can answer that question, I think he has examples. ICWP does not have examples like that that we would want to speak to.

I can say from a State perspective that it still would conflict with the constitutional law for States to sign up for an unknown cost and unknown time for an unknown reason.

Senator CAPITO. Okay, so the States in red that have conflicts, do they still go through with PPAs or are they just absolutely prohibited because they have to sign this agreement?

Ms. WALLACE. Some have, for the same reason that you spoke to, which is that you stand in between a Federal resource, Federal dollars, for an important project. More and more, States are saying, we can not do this.

Senator CAPITO. Mr. Haase, do you have an example?

Mr. HAASE. I do, in fact. A tangible example of this would be for projects that we have been involved in where pile driving, for example, is involved. Through the normal course of pile driving, even if it is done correctly, there can be damage to adjacent properties.

It has been our experience that the Corps has viewed that as being, that liability as being indemnified, essentially.

We believe that should be a project cost. It is something that occurs in the normal course of doing business of constructing projects, and again, we think it should be a shared project cost, not the responsibility of the non-Federal sponsor.

Senator CAPITO. Thank you for that example. Thank you.

Senator CARPER. Thank you, ma'am.

Senator Whitehouse, welcome. Good to see you.

Senator WHITEHOUSE. Thank you very much. Thank you for doing this. I think particularly as we see sea level rise accelerating, our coastal States have a real sense of urgency about making sure that we can work effectively, timely and fairly with the Army Corps of Engineers.

I would reiterate what I have told this committee before, which is that the flooding funding of the Army Corps of Engineers tends to be heavily, heavily, heavily biased toward upland, inland river flooding. There have been years for which every \$100 spent on upland and inland flooding, \$1 was spent on coastal flooding. When you look at what climate change portends for coasts, when you look at what our map in Rhode Island shows our coast is going to look like in the decades ahead, this is a very, very serious problem. We need to make sure that the Army Corps is going to be responsive to it.

Let me particularly welcome Bren Haase here, because he was kind enough to have dinner with Senator Cassidy and myself when I visited Louisiana, what, 4 years ago now, to look at the work going on down there to respond to Louisiana's rather spectacular loss of property to sea level rise. I was grateful for his time and expertise then, and I am grateful, sir, for your time and expertise now. It is good to see you again. I hope all is well.

We have heard about the sponsor share, requiring a certain amount of investment and risk, cost overruns adding further potential investment and risk, maintenance and operations being delegated to the sponsor, adding further financial exposure, and liability opening up and unknown can of potential risk, worms. In addition to that, it strikes me that even with all of those difficulties, if you could plan in an orderly way through time what an Army Corps project was going to look like and how it was going to roll out, that would make it a lot easier on the local sponsors.

My experience has been that the timing of Army Corps projects is very much also uncertain, often, and certainly unknown when you try to begin. You have the additional variable of not knowing when you are going to have to spend the money, in addition to not knowing how much you are going to have to spend in all of those four areas.

Is that an observation that is unique to Rhode Island? Or is that an observation that you have seen in your worlds as well? Mr. Haase, let me start with you.

Mr. HAASE. The short answer to the question is no, it is not just an observation from Rhode Island. It is certainly something that we have experienced as well.

The when, again, is an extremely important factor in all this, and it gets back to the theme I mentioned earlier, which is predict-

ability and certainty on all of these things. With less predictability comes less certainty that we are going to be able to be good partners and deliver what we have agreed to deliver on. That is something that we certainly have experienced in Louisiana.

Senator WHITEHOUSE. You mentioned that when the Corps is a partner in a project, the Corps can seem inflexible and overly committed to the status quo. I think that is a very important signal, particularly when the future is unknown. You do not know how quickly things are going to roll out. It can be very hard to get into the Corps bureaucracy and get real responsible answers on any kind of a reliable or timely basis.

The last thing I will mention, I see my friend Dan Sullivan here, who does not quite have this exact problem, but small States and communities that have big projects. The other question here is, I think what banks would call leverage. If you are in the State of California, if you are in the State of Texas, if you are in the State of New York, and there is a very significant Army Corps project that goes in and you are the sponsor, the non-Federal sponsor, then how that turns out as a percentage of your State's budget or local community's budget can be a very minor thing. If it triples or doubles or gets moved from year to year in ways that you can not control, that is a little bit more manageable.

Rhode Island is looking at having to build an entirely new hurricane barrier to defend our capital city from predicted flooding that will flood right through the downtown business zone, so that existing buildings will be underwater, not in the upper stories, but their front doors will be underwater. The main entrance to city hall is up a grand staircase. Well, the grand staircase is predicted to flood up to a certain point. All the operating doors along the sides that people use would flood out. You would presumably have to arrive at the city hall of Providence stairs in a boat and climb your way up.

Getting that fixed by having a proper hurricane barrier is a really big deal. That is going to be enormously, enormously expensive. For small States with huge projects, we have a real problem that I would like to flag as I close out.

Thank you, Chairman.

Senator CARPER. Just to reiterate the point that Sheldon is making, I do not know if this is correct or not, but I have been saying it for years, every 100 minutes they lose a piece of land in Louisiana the size of a football field. Is that still true?

Mr. HAASE. Yes, sir, on average that is true.

Senator CARPER. That is amazing. That is incredible.

I need to take a phone call, and I will be right back. Senator Capito is going preside for now, and I will be right back. Thanks very much.

Senator CAPITO.

[Presiding.] All right. Senator Ricketts?

Senator RICKETTS. Thank you, Chairman Carper, and thank you, Ranking Member Capito. Thank you to our witnesses for being here today to share your perspectives. I have often talked about the Army Corps of Engineers and my problem when I was Governor about their performance, anything from how long it took them to issue permits to how they were managing water storage that actu-

ally increased the chance for flooding, and then what they were doing with regard to flood control.

I am anxious to use WRDA to improve the governance of the Army Corps of Engineers, especially focusing on the fact that these projects need to be led by natural resource districts, municipalities and local communities. Flood control, in my opinion, needs to be the first priority for the Army Corps, and especially along the Missouri River. They should not be undermining that.

Before I get into some of these other topics, though, one of the things that the Army Corps of Engineers has rolled out is their permit finder. As we review the permit finder, it seems to be outdated already and lacks updates. If we are going to be able to manage these projects, it seems we have to have the proper information in there to be able to, and that needs to be prioritized, these tools to monitor the progress.

For all the witnesses, I would love you to share your experience with the Army Corps' permit finding data base. Have you tried to navigate this? What has been your experience?

Mr. Hague?

Mr. HAGUE. Senator, thank you for the question. I do not have any experience navigating the permit finder just yet, but I would be happy to followup with our conservation staff on the ground to see if they have, and report back to you.

Senator RICKETTS. That would be great. I would appreciate it. Just contact our office. I am not looking for a big, long essay, I just want to know about your experience with it.

Ms. Wallace?

Ms. WALLACE. We have also not had experience with the permit finder data base. I didn't know it existed.

Senator RICKETTS. Oh, Okay, maybe that is part of the problem with the Army Corps of Engineers, they didn't get that tool out there. That is why they are not updating it, because nobody knows it exists.

Mr. Haase?

Mr. HAASE. Yes, sir, thank you, Senator. We do have a little experience with the permit finder data base, and have found it actually to be relatively good in our case. Most of our permits and our actions that are pending are included in the data base and we are able to find those and query those well.

Senator RICKETTS. I would also note that I have had problems with the Army Corps in the past. The relationship between the State of Nebraska and the Army Corps is improving with the leadership we have had there for the last couple of Colonels that have come through. That has been a good deal. I think Colonel Hudson and Colonel Newbauer have all done a good job.

Ms. Wallace, you talked a little bit earlier about project partnerships, especially for small, local communities. How does the current PPA structure deter sponsorships? In Nebraska, we have primarily natural resource districts. We have 23 of them across the State that are all locally funded by property tax. How does the current PPA discourage something like a small entity like that from getting involved in a PPA?

Ms. WALLACE. Exactly. I think on one side you have Federal investment that meets what the local entity can put together for an

important water resource project. You have a lot of energy and motivation toward signing that PPA. On the flip side, you have long-term consequences of fully indemnifying the Federal Government and taking on perpetual O&M, basically, having a Federal hold on your property and your tax base. It is shifting from a larger tax base, that consequence to a much smaller tax base for a project that is in the national interest.

That comment earlier rang true. Who is that tax base and can they afford it, the project?

Senator RICKETTS. Right. Maybe you can expand upon that a little bit just about, if you are a small taxing base, and you are attempting a big project, and you have to take on full liability for the operations and maintenance as well as any sort of problems, especially, you said, 35 percent of the way through the project, you are actually taking this on.

Talk about that a little bit more, if you could. Have you seen specific instances of that where communities or small entities have said, hey, we are not going to do this because it is just too much?

Ms. WALLACE. We have had States, organizations, entities say they cannot sign Project Partnership Agreements because of the unknown costs and time of that cost, the reason for that cost, and what that means for them long-term financially.

Senator RICKETTS. In your estimation, would some of these projects be in the national interest, as you have described before?

Ms. WALLACE. Correct.

Senator RICKETTS. The idea here is that we have small entities where you are taking on, the local property taxpayers, in the case of Nebraska, they would have to take on these huge responsibilities to be able to meet the current requirements. That is just not going to be possible sometimes.

Maybe projects that are in the national interest are not being done because of the requirement to have that local participation? Is that fair?

Ms. WALLACE. That is exactly correct.

Senator RICKETTS. Thank you very much, Ms. Wallace. I think Mr. Haase also mentioned this, about the flexibility, having flexibility with the Corps. Certainly my experience as Governor was the Corps often has its rules and does not feel like it has the flexibility to be able to change those, to get up the chain of command takes time, all that sort of thing. I think there are some opportunities here for us to be able to take a look at that and see what we can do.

I appreciate your comment about having the local districts have more flexibility in negotiating these agreements, because they are the ones on the ground there, and certainly when you have local entities, they know exactly what their communities need. I think more flexibility would also help us to be able to get that done faster.

Thank you.

Ms. WALLACE. Thank you.

Senator CAPITO. Thank you.

Senator Cardin?

Senator CARDIN. Thank you, Madam Chair. Let me thank our witnesses.

Army Corps projects are critically important to my State of Maryland. We recognize the challenges with Project Partnership Agreements. Senator Ricketts mentioned, as many, the loss of opportunity because of the affordability and risk factors that we are not able to take full advantage of the Army Corps projects.

I want to take it from a little bit different angle. These projects in many cases have also national significance. It is not just the local benefit of the project to the entity that is submitting the project, but also to our Nation. The Chesapeake Bay I have talked about many times in this committee. It is a national resource, it is a national treasure, the largest estuary in our hemisphere. It is endangered, and it requires constant attention.

We have had Army Corps projects, partnership agreements, to deal with the Chesapeake Bay. The largest, from the point of economic impact, was Poplar Island. It was novel in its time, the first environmental restoration using dredged materials in order to restore an island in the Chesapeake Bay.

You go back 100, 150 years ago, there were several habitable islands in the Chesapeake Bay. They are almost all gone because of erosion and weather circumstances, et cetera. Poplar Island at one time was habitable. It was down to just a few acres, and we restored it through using dredged material, through an Army Corps project, through a Project Partnership Agreement.

It is critically important for the economics of our region, because we are keeping our harbor and the channels dredged at the proper level, and having a place to dispose of the material that is not only without controversy, it is popular. People want it.

At the same time, we are restoring an environmental island that is now a major area for migratory birds, it has restored wetlands which are critically important to filter the pollution in the Bay. It has all these positive impacts.

Now, we are just about at capacity at Poplar Island. We now have Mid-Bay. Mid-Bay is now moving forward, another island that disappeared that will be restored, that will have benefit for the economics of the ports through the channels and will also have a major impact on our commitment to our environment moving forward.

Mr. Hague, I would ask you this question. Yes, I am sensitive to the needs of easing the liability requirements. Should not there be special consideration given to those projects that have a national significance, such as environmental restoration? I know that at the Nature Conservancy, that is your mission. Should not we be having some considerations given in these partnership agreements when there is more than just the local benefit from the project?

Mr. HAGUE. Senator, thank you for the question, and thank you for your championing the Bay. You are exemplary in that role. Certainly, we have worked with you and your office over the years on a variety of Chesapeake Bay work with the Corps. Nature Conservancy has been involved on oyster restoration in the Bay for many years with Maryland DNR and Virginia Marine Resources. That is a global model for how to do oyster restoration.

Re-using dredged material, as you said, is an excellent opportunity to align where that dredged material is coming from in the Bay versus where it should go or can go for a lot of the multiple

purposes that you have identified. We appreciate your support for all those options with the Corps and the Bay.

On your question, there are certainly examples of Congress looking at restoration projects and saying it is of national significance and should be a Federal function and making those costs 100 percent Federal. As you were thinking about reforms to the PPA, that could be a way to look at it, that a lot of these projects are unique and that some of them are of national significance, and may be very amenable to the kind of approach you are talking about for nationally significant eco-projects.

Senator CARDIN. I might point out, oyster restoration is another good example where we used partnership agreements. Blackwater, trying to restore inlands in Blackwater through the use of dredged material. All those are Army Corps type projects that could be subject to consideration as to their importance to our Nation, not just to the local community. Blackwater is a national refuge, so it is not really local from that point of view. We will be looking at those types of considerations.

Thank you, Mr. Chairman.

Senator CARPER.

[Presiding.] Senator Cardin, thank you very, very much, not just for joining us but you are a highly valued member of this committee.

I would say to our witnesses, we talked a little bit about backgrounds, and Senator Sullivan, the witnesses who were good enough to share with us where they are from, and a little bit about themselves personally. I would say, to turn the tables here, we have three people sitting up here who are retired military, a retired Marine colonel, Senator Kelly, a retired Navy captain, and the last time I checked, I am a retired Navy captain.

We just celebrated about a month or so ago the anniversary of the birthday of the Marine Corps. That is a big day. In order to get someplace, the Navy provides the transportation for the Marines, the last time I checked.

All right, Senator Sullivan. That was my introduction.

Senator SULLIVAN. Thank you, Mr. Chairman. I appreciate that.

I am going to tee up a more specific question than we have been working on here, with the Chairman's good help. Mr. Hague, I am interested in the Nature Conservancy's view on this in particular. It is something I am actually working on with Senator Kelly right now as we speak.

This involves indigenous lands, tribal, Native lands in Alaska. In 1971, Congress passed what is called the Alaska Native Claims Settlement Act, ANCSA. I will not go into all the background, but it is the largest indigenous land claims settlement probably in the world, certainly in America, 44 million acres of land in Alaska went to the Native people to manage and own, actually in fee simple. It is not like the lower 48 reservation system. It was very innovative, helps with the development of these communities.

Unfortunately, Congress gave a lot of this land, 44 million acres, I think that is bigger than almost every State in the Country, a lot of the land was contaminated, like severely contaminated. Here you go, Native people. Here is your land settlement. Oh, by the way, it is completely contaminated.

Believe it or not, for years, the EPA under CERCLA was going to hold these Native communities, Native corporations, liable for the pollution, like we are going to sue you to clean up the land that we gave you that was polluted. That was absurd. It took a bill, Senator Carper and I got it passed in 2017, to say no, come on Feds, do not be stupid. The Native people are not liable for cleaning up contaminated lands that the Feds gave them contaminated.

We fixed that. It only took several years. I really appreciate the Chairman weighing in on my amendment, co-sponsoring it. He said it was righting this wrong.

Here is the next idea. We all care a lot about mitigation banking. My State has 65 percent of all wetlands in America. These are big issues for us. We are trying to work with the Corps in this committee to get legislation that would say Okay, when you do mitigation banking, wetlands, if you are doing that, and let's say you actually are mitigating in terms of a cleanup of a previously contaminated land in Alaska, that that would count with the Corps. It is complicated, but it is an innovative idea.

The idea that the Feds are going to come to Alaska and cleanup all this contaminated land that they gave the Native people, it is probably never going to happen, because it is literally in the tens of billions, if not hundreds of billions of dollars. It is not going to happen. We have to get some cleanup from the Feds. This is an innovative approach.

Senator Kelly and I are looking to introduce legislation that would have that provision and a second provision championed by Senator Kelly to establish a pilot program to allow the Army Corps to enter PPAs with Indian tribes to allow them to provide full project management control for the construction of eligible projects.

I know you guys at the Nature Conservancy say you are experts on these kinds of mitigation banks. What do you think of an idea like that, that helps Native indigenous people cleanup their lands, but maybe from a source that involves mitigation bank, not from the traditional way, saying the Feds are going to clean up, which they should have, they should have never given the lands, 44 million acres, half of it was polluted? What do you think of that?

Mr. HAGUE. Thank you, Senator.

Senator SULLIVAN. I know you do not have the details, but in general. You guys do this a lot, so I am curious. We want to try and get this over the goal line in the committee. The Chairman has already worked with us, the staff is working on this, it is a big, innovative idea that we think is really important and timely.

Mr. HAGUE. Thank you, Senator, for the question. I certainly appreciate your leadership on fighting on behalf of your constituents. I know from our chapter up in Alaska that we have been in contact with folks on this kind of topic, the brownfields team, the Alaska Native Tribal Health Consortium, I believe. We are definitely looking to build a partnership there for remediation of these kinds of lands. It is something we are looking into very seriously.

Of course, the Nature Conservancy has a lot of experience with mitigation banking nationally, setting up banks and running banks in different States. It is an approach that we embrace quite strongly as a way to get innovative financing approaches to the kind of

conservation work we need to get done, where there is not an obvious source of funding otherwise.

It is a concept I would love to look at, if we are able to share the details, and report back to you.

Senator SULLIVAN. Good. We will do that as a part of this committee's followup. We are working through the committee here, staff, Senator Kelly and I and our bipartisan bill on these innovative issues, to try and help tribal indigenous communities that need help. A lot of them are unfortunately on lands that are polluted. Then they can not undertake economic development and other things like that.

We would welcome your interest and eventually your support if you want to take a look at the language we are working on with the staff of this committee.

Thank you, Mr. Chairman. It is a big issue that hopefully we can resolve.

Senator CARPER. Thanks. I appreciate the chance to work with you and your team on this.

Senator Kelly, welcome. Good to see you.

Senator KELLY. Thank you, Mr. Chairman. Senator Sullivan, I look forward to getting this across the finish line as well. It is really important in the State of Arizona as well. We have 22 Native American tribes, and often have similar issues with polluted land or land that needs to be cleaned up.

We have had some success with tribes working with the Army Corps. I was with Governor Stephen Lewis of the Gila River Indian Community just on Saturday at a football game, University of Arizona versus Arizona State. The annual in-State bowl game went very well for UofA, not so well for ASU.

Senator SULLIVAN. Who do you root for in that game?

Senator KELLY. I have mixed feelings. I live close to the University of Arizona. My eldest daughter is a student at the University of Arizona, my younger daughter is a graduate of ASU.

Senator CARPER. My wife is a graduate of ASU, Appalachian State University.

[Laughter.]

Senator KELLY. They are both great schools. I am going to have to get one of those jerseys like Kelce's mother has, half on one side, half on the other.

This hearing is really important to identify other ways that the Corps can partner with communities on projects. One of the things that I have championed with Congressman Stanton, also from Arizona, was the creation of Section 595, the Rural Arizona Water Infrastructure Program. This was about 3 years ago, one of the first things I did when I got to the U.S. Senate. I am coming up on being here for 3 years. It has gone by pretty quickly.

This 595 helps small and underserved communities in Arizona partner with the Army Corps to build drinking water, water conservation, flood control, and wastewater infrastructure. When he has appeared before this committee in the past, Secretary Connor has pointed to this program as an example of how the Army Corps can help make investments in the west to respond to long-term drought conditions.

There is just one problem here, and that is that many projects funded through this program still do not have finalized PPAs with the Corps. In fact, we have some communities like the city of Buckeye, Arizona, which has been waiting for more than 2 years to finalize a Project Partnership Agreement.

These projects are often rather small dollar projects, usually less than \$3 million. Especially for projects that help Arizona communities respond to drought conditions, years is too long to wait.

Mr. Hague, you mentioned in your testimony that the Nature Conservancy does lots of work with the Corps and local project sponsors. What challenges are faced by local sponsors when it takes years for the Corps to finalize a Project Partnership Agreement?

Mr. HAGUE. Thank you for the question, Senator. When you have a project that is delayed like that and it takes many years, there are a variety of problems, of course, that could come up.

You do think about the issue of time being money, and certainly with the Army Corps, that is the case as well. We have been involved in projects where if there is a very long gap between when a project is authorized, originally envisioned, and when you can sign a PPA and start construction, things like the cost of the real estate necessary for the project can go up dramatically. We have actually had instances where we have had to come back to Congress and get a project reauthorized at a higher level because of those kinds of delays.

The quicker you can get to signing the easier it is. There are a lot of internal obstacles for that. I think any time that you are trying to negotiate a Project Partnership Agreement that requires on up to say, headquarters level for approval, we do see significant delays, at least of a year in how long that review at headquarters takes.

Senator KELLY. Have you seen communities just get frustrated by this and give up?

Mr. HAGUE. I do not have an example specifically of where a community has walked away. A lot of communities I think are either, they are faced with a choice of a take-it-or-leave-it in a lot of cases. They have a great need that they can only achieve these kinds of projects with the Corps.

They either need to take the agreement as is, and maybe take on terms that they are really not comfortable with, or push for those kinds of higher level reviews that can delay projects for years and drive up the cost of doing business.

Senator KELLY. What are some of the tools available, here in my remaining time, that the Corps could use, administrative tools that they could use to sign these agreements?

Mr. HAGUE. The Corps has developed a bunch of model agreements, a couple of dozen model agreements. These are different template models that you could use for an environmental infrastructure project like you are discussing, an ecosystem restoration project, a flood control project. There are a variety of different models. As long as you are sponsoring or willing to accept that model sort of as is, you can get it done very quickly.

Any time you want to seek a deviation from that model, even a non-substantive deviation, that is going to require review by the di-

vision, and if you are looking for a substantive deviation, that is going to require review by headquarters. That is where things can really get delayed.

They do have these model agreements, and have delegated some decisionmaking authority from headquarters down to division. Those have helped. Any time you are seeking deviations, it slows things down, and you can not get around the indemnification and operations and management challenges we have discussed here today, either way.

Senator KELLY. Thank you, Mr. Hague.

Thank you, Mr. Chairman.

Senator CARPER. Thank you, Senator Kelly.

Senator Fetterman, I am going to yield to Senator Capito for a couple of questions, and we will come to you next. Thank you.

Senator Capito?

Senator CAPITO. Thank you, Senator Fetterman.

I just have a quick question. We have kind of dug down deep on the indemnity thing, I think I understand that issue. Let's talk about the operation and maintenance responsibility in perpetuity, trying to figure out ways to improve that. You said, I think Ms. Wallace or somebody said that you have to sign these agreements at the 35 percent design phase. Is that correct?

Ms. WALLACE. That is even in the planning.

Senator CAPITO. Even in the planning, Okay. How would you improve that, besides just wiping the whole thing out? That is not going to happen, we do not think. What would you say, Mr. Hague, that would have meaningful impacts?

Mr. HAGUE. Right. I believe in your opening statement you referred to the useful life of the project. I think that is a concept that might be very helpful to latch onto. We have talked a lot about the operations and maintenance responsibility. I think in truth it is operations, maintenance, repair, rehabilitation and replacement responsibility. It is an even longer acronym, if you pull it out.

That final R of that acronym is replacement. That kind of requirement also can be particularly problematic for a sponsor when they are signing a PPA very early on in the process to consider having to replace a project over and over and over again.

Our experience mostly in the ecosystem restoration realm, you can imagine situations where you have a useful life of project, you have achieved the project purposes, you have sort of restored natural functioning, and it would be tremendously helpful for the sponsors if there was a way to tie the end of their obligations some way to that useful life of a project, so that we know going on that there is an end point somewhere down the line.

Senator CAPITO. Good suggestion.

Ms. Wallace?

Ms. WALLACE. That undefined period is so important, as Mr. Hague said, there is an obligation, and that obligation is to the Corps for the design manual, the O&M manual.

Senator CAPITO. Right, that they give you at the end. Okay, I got that.

Ms. WALLACE. Yes, at the ribbon cutting. The question becomes, can the sponsor then decide what to do with that replacement, or is it beholden to the Federal Government.

Senator CAPITO. I see.

Ms. WALLACE. At the end of a design period, at least there is a cap on who that obligation is to, if it is to their local tax base, or to themselves or to the Federal Government.

Senator CAPITO. Mr. Haase, do you have any suggestions in there?

Mr. HAASE. I would reiterate Mr. Hague's comments that the useful, reasonable sort of life of the project is the operative language that should be used.

Senator CAPITO. Is that a standard that you can find? Is that something that the Corps, you would say, Okay, this dam is going to last 45 years, that is the useful life? Are those measurements out there to be able to figure that out?

Mr. HAASE. They are. The projects that we are involved in with the Corps typically have a design life and a period of analysis associated with them. That is well defined, yes.

Senator CAPITO. Okay, thank you. Thank you, Mr. Chairman, and thank all of you. I am sorry I have to duck out. I appreciate it, and it is good to see everybody.

Senator CARPER. Senator Capito, thank you so much.

Senator FETTERMAN, welcome. Good to see you.

Senator FETTERMAN. Thank you, Mr. Chairman. I just want to say that I am a gigantic fan of the Army Corps, really. I wish I had a shirt that I could say that, but they do not have it in my size.

I live literally right on the Mon River, and I have seen the kind of work you have done. I have actually been at the ribbon cuttings for some. The important work you have done has generated another century of commerce on the river. Again, thank you for that. I could never figure out how you get it done, but you guys do. You get it done, and I am really in awe of your work.

Now you are working with our delegation to work on the lockage on the Allegheny as well, and that is important as well. We are grateful. Now I am here to talk about other important issues in which you are involved.

I am the last speaker, and this is not exactly as sexy or as interesting as who Taylor Swift is dating. We are here to talk about a really important issue in counties all across Pennsylvania, whether it is Clinton or Elk or Northumberland. They have significant issues of acid mine drainage. Not on the tip of the tongue of a lot of Pennsylvanians or Americans. It is really important in Pennsylvania.

Now I want to ask you about the kind of support we would need from the Corps. That is why I am proud to work with my colleague, the best Senator in Pennsylvania, Senator Casey, on this kind of work.

Mr. Hague, what can we learn from the Corps, from other environmental programs, to ensure that the Corps works are effectively working within communities to address this acid mine drainage?

Mr. HAGUE. Thank you for the question, Senator. I am also a huge fan of the Army Corps. We at the Nature Conservancy have done incredible work with them over decades doing ecosystem restoration across this Country. I was also born and raised in West Virginia, not too far from your State. I really appreciate your focus

on the acid mine drainage issue. It is something I am familiar with.

The Corps is perhaps uniquely capable in this world of doing some of the largest, most complex ecosystem restoration work that there is. Training the resources of the Army Corps on the issues of acid mine drainage might be particularly helpful for your home State.

Apropos of the topic of this hearing, one of the things I might suggest is thinking again about, if there is a way to, the ways to constrain the sponsors of those kinds of projects, constrain their financial or legal risks. I think particularly with acid mine drainage, where you might have an ongoing discharge of contaminated water, you might want to think specifically about how we can encourage non-Federal sponsors to join in those efforts by finding some ways to articulate an end point at which they can plan around their financial commitments.

Senator FETTERMAN. Limits on the financial resources, are there laws on the books that are working against that kind of an outcome? Or whether some of the abandoned mines—is there anything more specific that is driving it?

Mr. HAGUE. Yes, Senator. A lot of the problem is that sponsors of all projects, and I think this would apply for restoration in the acid mine drainage context as well, do have to sign these Project Partnership Agreements that have similar requirements in them that are rooted in law. To hold and save the Federal Government harmless is something that is rooted in statute as well as this commitment to doing operations and maintenance on these works is something that is rooted in statute. Those things would be particularly powerful if this committee could address them in WRDA 2024.

Senator FETTERMAN. We do not have the time to really drill down on that. I do not do much well, but I do hire people that are a lot smarter than I am. I have a staff that is very much part of this, and very much educating me. We would like to continue to have that conversation so we can be most effective in addressing that specifically, what is really at the root of some of these challenges that we have, to be more informed and to be a more effective Senator, to address this. Thank you.

Mr. Chairman, I have 23 seconds left, and I cede that back to the Chair.

Senator CARPER. Well, I am going to use those 23 seconds well. You talked about surrounding yourself with people smarter than you. When I was elected Governor, a former Governor came to see me. He gave me some great advice. He was an older guy, probably about 80 years old by then, Bert Carvel, from Laurel, Delaware. He said, "Governor Tom," I had been Governor for all of a month, and he said, "I have some words of advice." I said, "What are they?" He said, "First one is, the main thing is to keep the main thing the main thing." The other thing he said is, "Always hire people smarter than you." I have tried to do both of those. Obviously, you come from the same school as I do.

Senator FETTERMAN. I am honored to be a member of your committee. Thank you.

Senator CARPER. The honor is ours, thank you. Thanks for being here today.

In baseball, they have a term they use, telegraphing a pitch, the way you hold a ball, the pitcher holds the ball, releases the ball sort of gives the hitter an idea of what the pitcher is throwing. I am going to telegraph a pitch, unless another member of the committee shows up.

The last question I am going to ask you today is just to see if there is anything else you would like to add. Looking at this hearing, looking back, thinking about what you have been asked, what you have not been asked, maybe a closing thought or two from each of you. We will do that.

In anticipation of that, let me just say, we talked earlier about every 100 minutes Louisiana loses a piece of land the size of a football field. I do not know about you; I watched a lot of football over the weekend. Louisiana is a pretty big State, but it can not last forever at the rate we are going.

Having said that, the economy, we do not think often about good news in this body, or maybe even in this Country. There is a way to look at things negatively, we are pretty good at doing that. Finding the good news is sometimes buried.

With respect to the economy, it is pretty darned good. I have been around for a while and I have seen some really bad economies, you have too. It has been pretty darned good in the last 3 years or so. I have been saying it is like 10 million or 11 million, I learned today it is over 13 million jobs that have been created in the last 3 years or so, which is pretty astounding. Our unemployment rate, I think for the last 3 years, has been coming in under 4 percent. I think the unemployment rate today for our Country is about 3.9 percent. Historically, that is a really good stretch. Hopefully, we can keep it going.

I am told that our employers in this Country have added in the last couple of years about 240,000 jobs a month. Think about that; 240,000 jobs a month, about a quarter million jobs a month for our economy. The number of people that are unemployed looking for jobs is small compared to the number of jobs that are out there going on. We hear those numbers every week or so from the Department of Labor.

GDP had a good month, a good year, 3 percent is considered really good GDP growth. For this quarter, it has been over 5 percent, over 5 percent. That is the good news.

The reality is strong economies do not last forever. Eventually we will fall into recessions, the whole world falls into recession sometimes. What we want to make sure of is when that happens the recessions are as shallow as can be and as short as can be, and we get back on the right track. One of the ways to make sure that we get back on the right track is to do the kind of things for our Country, for our States that we are talking about here today.

A big part of it is the ability to ship around the world the products, the goods that we create here in all of our States. Without the Army Corps of Engineers doing the work to help enable shipping to move through our waterways throughout this Country, on our coasts, in our ports, like the Port of Wilmington is one example, but without that, we are not going to come back from a recession as quickly in the future. We want to make sure that our economy re-

mains strong and the capability to do more with even less is realized.

The other thing I want to say is, most of us have heard of the golden rule, we are a Country of a lot of different religions. As it turns out, every major religion on the planet has a golden rule in it. If you are Protestant, Jewish, Catholic, Muslim, Buddhist, Hindu, they all have it. When I give commencement addresses, I say to the graduates, I give them a couple of rules to keep in mind to be successful, aim high, tell them to work hard, tell them to embrace the golden rule. I tell them do not quit. Aim high, work hard, embrace the golden rule, do not quit.

I tell them that the golden rule is in every major religion of the world, and if it is something that is in every major religion of the world, maybe we ought to pay some attention to it. Nobody has invoked the golden rule here today, but actually I think part of what we are talking about is treating other people the way we would want to be treated, and at the same time, making sure they can have a better quality of life in States across America.

Any last thoughts that any of you would like to share with us before I wrap it up? Mr. Hague?

Mr. HAGUE. Thank you, Senator, for the opportunity. I have not had a chance today to thank this committee enough for the work you have done to reform these PPAs in the past. I would refer you to my written statement, which does include several of the improvements that Congress has made to help sponsors through these processes.

One of them that I would point out is from WRDA 2016. We have talked a lot about the operations and maintenance requirement. That WRDA bill in 2016 did create a little bit of a relief for the operation and maintenance for the non-structural elements and non-mechanical elements of the ecosystem restoration projects.

That might be an opportunity for you in your upcoming WRDA bill to look at leveraging that authority, perhaps expanding it to other project types with the structural elements and ecosystem restoration. I think that is a really good starting point for thinking about ways to give non-Federal sponsors some certainty that there is an end date to their financial obligations.

Thank you.

Senator CARPER. Good. Thanks for that.

Ms. Wallace, a parting thought or two.

Ms. WALLACE. Thank you. I want to reiterate my appreciation to the committee for this important issue.

We are missing out on the benefits of investments on important non-Federal lands. We are not fully realizing the potential to improve our Nation's water resources, because we are limiting the possible locations of those investments. If Congress does elect to resolve this issue, we could place our investments where the need and resulting benefit are the greatest.

Thank you.

Senator CARPER. Thank you.

Mr. HAASE. Thank you, Senator Carper.

One thing I would mention that we have not yet today is that it would be good for the Corps of Engineers to update its guidance for local cooperative agreements for local partners. That has not

been updated since 1989. If done in coordination with a group of non-Federal sponsors from across the Country, it might be a good launching pad to implement some of the things we have discussed here today.

Then last, I would just leave you with a thought that while we are talking about PPAs, we are talking about indemnity, we are talking about some of these weedy things, these are all related to projects that have real impacts to communities and to economies across the Country. They are important that we address in order to support all those things for our States and for our Nation.

Thank you.

Senator CARPER. All right, good. Thanks.

I said at the beginning of the hearing, if it is not perfect, make it better, and bipartisan solutions are lasting solutions. As hard as we try, every 2 years when we pass the WRDA bill, it is not perfect.

We know there are perfections out there somewhere, and our determination is to get closer every couple of years to that perfection and make sure that we are laying the groundwork for a stronger economy, a better economy, more jobs for people, and frankly, doing the right thing by our environment.

I want to close; we want to give you some followup questions. I mentioned we want to submit some questions for the record, as you might know, and might expect. I am looking at this, by 4 p.m. today, we would like to have the responses tomorrow. Well, that is not true.

[Laughter.]

Senator CARPER. We are going to ask our colleagues to submit their written questions for the record by 4 p.m. on Wednesday, December 13th. That is when we are asking our committee to have their questions for the record. We will compile those at the committee level, working with our friends on the Republican side, we will send those questions to each of you and we will ask you to reply by next year, January 3d.

With that, I once again want to give my thanks to Senator Capito and all our colleagues who have been able to join us today, and especially to the members of our committee staff, both minority and majority. We would not be able to have these hearings without them.

We are going to take what you provided us today, in addition to that which comes from our questions for the record, and see if we can not come up with an even better WRDA the next time around.

Anything else? With that, as we say here, in Senate language, it is a wrap. With that, the hearing is adjourned.

[Whereupon, at 11:43 a.m., the hearing was adjourned.]



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January 3, 2024

The Honorable Tom Carper, Chair
 The Honorable Shelley Moore Capito, Ranking Member
 U.S. Senate Committee on Environment and Public Works
 410 Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

On behalf of the Interstate Council on Water Policy (ICWP), I am pleased to express our members' appreciation to your leadership of the Senate Environment and Public Works Committee. ICWP's members have come together to respectfully request that Congress reform the U.S. Army Corps of Engineers' (USACE) project partnership agreements (PPAs), particularly to achieve a more shared approach to liability on important water resources projects. Your effort to convene a hearing on November 29th specifically on the matter of USACE PPAs is a promising indication that Congress will resolve the challenges for non-federal sponsors in the forthcoming Water Resources Development Act (WRDA).

In response to your request, below are ICWP's responses to the Committee's Questions for the Record.

Question 1 (Chairman Carper):

1. *Please elaborate on the challenges and opportunities the Interstate Council on Water Policy sees in partnering with the U.S. Army Corps of Engineers (USACE).*
 - a. *Specify which existing statutory authorities contribute to challenges and/or provide potential opportunities to address concerns with Project Partnership Agreements.*
 - b. *Specify USACE policy and practice, including implementation guidance that contributes to challenges and/or provides potential opportunities to address concerns with Project Partnership Agreements.*

As shared in our hearing testimony on November 29th, ICWP and our membership are concerned with the problematic structure of USACE PPAs which requires that non-federal sponsors to assume: 1) complete liability for constructed projects (except for when fault or negligence is proven) and 2) operations, maintenance, repair, replacement, and rehabilitation (OMRR&R) for the project in perpetuity. These requirements stem from statutory obligations set forth in the Water Resources Development Act (WRDA) of 1986. Further details are provided below.

Indemnification

Challenges: Section 103(j) of WRDA 1986 states that: *“Any project to which this section applies...shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to...hold and save the United States free from damages...”* This blanket indemnification language requires the assumption of liability that is in direct conflict with many states’ constitutions and laws as well as local government and nonprofit organizations’ policies, as discussed in our testimony.

Opportunities: A consistent approach to address blanket indemnification with nonfederal sponsors is needed at the national level. We respectfully request that the Committee revise statutory language via WRDA 2024 to remove blanket indemnification requirements for nonfederal sponsors.

Operations, maintenance, repair, replacement, and rehabilitation (OMRR&R)

Challenges: Statutory language from Section 103(j) of WRDA 1986 also states that: *“Any project to which this section applies...shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to pay 100 percent of the operations, maintenance and replacement and rehabilitation costs of the project...”* It inhibits execution of PPAs by requiring non-federal sponsors to assume complete liability for constructed projects (except for when fault or negligence is proven) and OMRR&R in perpetuity.

Past USACE policy limited non-federal sponsors’ OMRR&R obligations to 50 years (which is the expected life of a constructed project). USACE changed its policy by issuing implementation guidance on April 5, 2012 to require that non-federal sponsors maintain responsibility for OMRR&R obligations in perpetuity (see 3(d) of Attachment 1). The 2012 guidance states that *“As with any legally constituted public body... the nonprofit entity must demonstrate the capability to satisfy a sponsor’s responsibilities under the agreement, including... performance, in perpetuity, of any non-federal OMRR&R.”* This change now obligates non-federal sponsors to be responsible for major reconstruction or replacement costs, with no financial support from USACE, beyond the end of the project’s life.

Additional discussion that confirms USACE approach and references relevant statutory language in WRDA 1986 can be found in the correspondence from USACE headquarters dated June 30, 2016 in Attachment 2.

Opportunities: As we discussed during the November 29th hearing, the change in OMRR&R requirements due to the 2012 Implementation Guidance results in a completely one-sided approach to the assumption of risk that is unsustainable for non-federal sponsors to shoulder for an unbounded period of time.

We respectfully request that the Committee modify WRDA 1986 Section 103(j) language to establish a timeframe for the termination of OMRR&R obligations for nonfederal sponsors, preferably no later than 50 years after project completion (which is the average life of a project).

Question 2 (Chairman Carper):

2. Please provide any examples, to the extent possible, of statutory or USACE policy requirements precipitating prolonged or unsuccessful Project Partnership Agreement negotiations with a non-federal sponsor (i.e., the agreement took several months or longer to negotiate and execute, or the non-federal sponsor decided not to pursue a Project Partnership Agreement with USACE).

The following examples are just a snapshot of projects with PPA implementation issues in recent years. ICWP is working with a cohort of organizations across the country who either serve as or work with nonfederal sponsors and can also provide additional examples for the Committee's consideration.

Example 1:

Windy Bar-Schenimann Chute Complex

Windy Bar Island Conservation Area is owned by the Conservation Commission of Missouri and is located near Cape Girardeau, Missouri in the Upper Mississippi River. Proposed project features have focused primarily on enhancements to Schenimann Chute's depth and flow diversity but have also included enhancing connectivity of backwaters habitats and forest stand improvement on Windy Bar.

A project proposal fact sheet to initiate a Habitat Rehabilitation and Enhancement Project (HREP) in the USACE Rock Island District under the Upper Mississippi River Restoration (UMRR) Program has existed in some form since 2002. In the most recent project selection process undertaken by the UMRR in 2018, this project was not moved forward by Missouri due to concerns over the PPA blanket indemnification and OMRR&R liability requirements.

Example 2:

Claiborne and Millers Ferry Locks and Dams Fish Passage Study (Alabama Fish Passage Study)

The Alabama Fish Passage Study is a project in the USACE Mobile District that seeks to establish fish passage by reconnecting over 230 miles of the Alabama and Cahaba Rivers to the Mobile River Delta into the Gulf of Mexico, providing connectivity for multiple species of fish, crawfish, mussels, turtles, and other aquatic wildlife. The study was initiated in November 2021 and The Nature Conservancy is the non-federal partner. PPA execution has not taken place to-date due to concerns over the PPA blanket indemnification and OMRR&R liability requirements.

Example(s) 3: Illinois

The following are three Upper Missouri River Restoration cost share projects in the USACE St. Louis District that have approved fact sheets and would currently require a PPA:

- Spunky Bottoms Ecosystem Restoration Project (Brown County, IL) -- located in the Little Creek Drainage District along the right descending bank of the Illinois River north of Meredosia, Illinois, and below the LaGrange Lock and Dam. This is a habitat restoration project to reconnect the river with the backwater lakes and wetlands that once existed along the river.
- Swan Lake Flood Damage Assessment (Calhoun County, IL) -- located on the right descending bank of the Illinois River in the Calhoun Division of the Two Rivers National Wildlife Refuge and the Illinois Department of Natural Resources Fuller Lake Management Area. This is a habitat restoration project to restore and increase aquatic habitat value for invertebrates, waterfowl and fishes.
- Rip Rap Landing (Calhoun County, IL) -- located in Pool 25 of the Mississippi River covering 2,338 acres of river bottomlands, the majority of which are owned by the Illinois Department of Natural Resources. The overall project goal is to increase the quality and quantity of aquatic, non-forested wetland, and forested wetland habitats.

The Illinois Department of Natural Resources (IDNR) currently has approximately \$35.7M that has been appropriated as cost share funds. Unfortunately, these funds have been rolled over annually for up to three decades without these projects proceeding due to the current prohibitive nature of USACE PPA indemnification and OMRR&R liability requirements. These funds will be confiscated eventually, resulting in money left on the table for USACE. The same applies if UMRR does not use its funding because it will be reduced or sent elsewhere.

Question 3 (Senator Fetterman)

3. *The three, mid-Atlantic river basin commissions that work in Pennsylvania —the Interstate Commission on the Potomac River Basin (ICPRB), the Delaware River Basin Commission (DRBC) and the Susquehanna River Basin Commission (SRBC) — play a critical role in protecting our water. While they're eligible for annual funding from the Army Corps by federal statute, they haven't consistently received it. I have proposed a modification of provisions of WRDA 2007 and 2014 to shift the funding authorization from the Corps to the EPA. Can you speak to this matter – would such a move be appropriate and make sense as a solution to rectify the failure of the federal government to fund the operation of these important commissions?*

Transitioning funding authorization for the ICPRB, DRBC, and SRBC from USACE to the Environmental Protection Agency (EPA) is a sensible and appropriate strategy, strongly supported by all three commissions. The federal government's inconsistent financial support over the past 25 years—evidenced by isolated appropriations in FY2009 and a singular allocation to the DRBC in FY2023—reflects a structural challenge within USACE, rather than a lack of commitment to fulfill funding obligations.

USACE operates with a project-centric budget, focusing on specific, tangible products like levee and dam construction and navigational dredging, including the necessary feasibility studies for such projects. This approach contrasts sharply with the EPA's program-based budgeting, which encompasses broader, goal-oriented initiatives crucial for achieving and maintaining clean waterways and safe drinking water. The EPA's funding structure is well-suited for disbursing operational funds to states and regional bodies, making it an ideal channel for annual allocations to the ICPRB, DRBC, and SRBC.

Furthermore, WRDA 2007¹ and 2014² already express Congress's intent for federal agencies to fund these commissions. Incorporating them as a line-item in the EPA's budget streamlines the funding process, leveraging an established mechanism for efficient fund allocation. This proposed realignment not only honors Congressional mandates but also aligns the commissions' missions with those of the EPA, fostering enhanced collaboration and synergy in pursuing shared environmental objectives. Shifting the funding authorization from USACE to the EPA better aligns the structure of federal funding and the overarching mission of these commissions.

Thank you for the opportunity to illuminate the challenges of how USACE's current PPA structure is often problematic for non-federal sponsors to participate as cost-share partners in important water resources projects across the nation. Please contact me

¹ Section 5019(b) of the Water Resources Development Act of 2007, Public Law 110-114

² Section 4001(b) of the Water Resources Reform and Development Act of 2014, Public Law 113-121

(beth@icwp.org) with any additional questions as well as any ways that ICWP can be helpful to the Committee as it drafts WRDA 2024.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Beth Callaway', with a stylized flourish at the end.

Beth Callaway
Executive Director
Interstate Council on Water Policy